(24,197)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 141.

MYLES SALT COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

THE BOARD OF COMMISSIONERS OF THE IBERIA AND ST. MARY DRAINAGE DISTRICT AND GEORGE HENDERSON, SHERIFF AND EX OFFICIO TAX COLLECTOR OF THE PARISH OF IBERIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 17, 1915.

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1 To the Honorable the Judge of the 19th Judicial District Court in and for the Parish of Iberia, State of Louisiana:

This the petition of the Myles Salt Company, Limited, a corporation domiciled and doing business in the Parish of Iberia, State of Louisiana, with respect represents:

1st.

That it is engaged in the mining of salt from a rock salt deposit situated on the island known as Weeks Island in the Parish of Iberia, which salt deposit it owns in fee simple, together with one hundred acres of the surface. It attaches hereto and makes part hereof a a duly cerified copy of the act by which it acquired said salt deposit and said surface lands, marked "Exhibit A."

2nd.

That Weeks Island on which its salt mine aforesaid is located forms one of a chain of islands along the Vermillion Bay coast physiographically termed uplands or hills, affording the highest uniform elevation above sea level in Southwest Louisiana; that the said Weeks Island arising abruptly on the Bay coast to an elevation reaching one hundred and seventy-five feet or more, is surrounded on one side by a deep bayou known as Weeks Bayou, on another side by another Bayou, on the rear by a salt water marsh separating it from the mainland, and on the front by Vermillion Bay, with a small strip of salt water marsh land intervening, and that the same is peculiarly an island of unique formation.

3rd.

It shows that the topography of this island is high and rolling, the drainage excessive, and that washing and erosion are serious problems, and that all of the territory lying between it and
2 Bayou Teche, which comprises a populous and thickly settled country outside of the seamarsh surrounding it, presents the character of low lands as contradistinguished from it as high lands or uplands, reaching a maximum elevation above sea level of about fifteen feet as against a maximum elevation for Weeks Island of one hundred and seventy-five feet to two-hundred feet above sea level.

4th.

It shows that in lieu of needing drainage the problem that Weeks Island is confronted with is to guard against washing and erosion, and that the drainage of all the territory lying between it and Bayou Teche on all sides and to all extents leads to the mars! es subject to tidal overflow between it and the mainland.

5th.

It shows that some years ago a drainage district known as the Iberia & St. Mary Drainage District was organized with its domicile in Iberia Parish and St. Mary Parish at the instigation of interested individuals for the purpose of drainage into the bayous and marshes surrounding Weeks Island certain lands lying between Bayou Teche and the said marshes in the Parishes of Iberia and St. Mary, the confines of which drainage district are made to more fully and accurately appear by a copy of the official map thereof hereto annexed and made part hereof for reference, marked "Exhibit B."

6th.

Your petitioner shows that solely and only with the view of deriving revenues from the assessment of the lands comprising Weeks Island and the salt deposit thereon and only for the benefit of the other properties and not upon the theory that a general scheme of drainage would inure to the benefit of all of the property
3 therein, even indirectly and not through an exercise of a sound and legal legislative discretion, Weeks Island was included within the confines of said Drainage District, and in pursuance of the plan of the Commissioners of said Drainage District an election was held conformably to the existing laws of the State for the imposition of an ad valorem tax of five mills for a period of forty years upon which to predicate the issuance of bonds from the proceeds of which it was sought to effect a scheme of drainage for the said territory lying between the said Weeks Island and Bayou Teche as aforesaid, and that the election resulted in the imposition of said tax and the authorizing of the issuance of the bonds, notwithstanding the protest of the parties interested in Weeks Island.

7th.

Your petitioner shows that with the organization of said drainage district and at the time of the submission of the proposition to the qualified voters for authority to issue bonds and to impose an ad valorem tax of five mills for their retirement, it was not intended nor has it ever been intended, nor was it possible nor is it possible to give any benefits of the drainage scheme to Weeks Island or to the salt deposit thereon, directly or indirectly, and that its inclusion within the confines of said drainage district was solely and only for the purpose of deriving revenues to the end of granting a special benefit to the other lands subject to be improved by drainage without any benefit to your petitioner or its property whatever.

Your petitioner further avers that the so-called tax for drainage purposes is not in its nature and essence a tax in the ordinary sense of that word, but it is a forced local contribution which can
4 have no legal basis except upon the fact that the property upon which it is levied derives a benefit from the contribution or tax, and that the property of your petitioner which is the most valuable and the highest assessed piece of property in the said district has never received one single cent of benefit from the drainage

system constructed and maintained in said drainage district, and never can or will in the future receive any benefit whatever from said drainage system.

8th.

It shows that the action and conduct of the Police Juries of Iberia Parish and St. Mary Parish in organizing said drainage district, and the subsequent action of the Board of Commissioners of said Drainage District in so far as the inclusion of Weeks Island was concerned, and more especially the salt deposit thereon, only for the benefit of the other lands, was an unconstitutional usurpation of authority and was and is an effort to take your petitioner's property without due process of law in violation of the 14th amendment of the Constitution of the United States which prohibits any State from depriving any person of life, liberty or property without due process of law.

9th.

It shows that it has uniformly for these many reasons refused to pay the said tax, and that at no time prior to this year has an effort been made to collect the same, it basing its refusal to pay the same on its constitutional rights and urging its vested right—its right of property not to be disturbed without due process of law—but that now acting at the instance of the Board of Commissioners of said Iberia & St. Mary Drainage District, George Henderson, Sheriff and Ex-Officio Tax Collector of Iberia Parish, has demanded
5 an ad valorem tax of five mills upon its assessment for its land on Weeks Island and its salt mine, and in view of its refusal to pay the same is about to advertise your petitioner's said property as a delinquent for said tax for a period of four years, aggregating the sum of Two Thousand Dollars with the penalties provided for by law, and that the conduct of the said Tax Collector and the said Board of Commissioners is a flagrant infringement of your petitioner's constitutional rights and immunities and is an unwarranted assumption of authority which beclouds your petitioner's title, places a great burden upon it, affects its commercial value, and in fine results in irrevocable injury to your petitioner and to your petitioner's property and is an attempt to take the same without due process of law in violation of the 14th amendment of the Constitution*al* of the United States.

10th.

Your petitioner shows that the advertisement of said property for a tax delinquency will as aforesaid materially and irrevocably do damage to it as it will cloud its title and affect its value, and that a sale or adjudication for a tax delinquency will aggravate the situation and will be the taking of property as aforesaid without due process of law in violation of the 14th Amendment to the Constitution of the United States, which amendment or part thereof, which prohibits any State from depriving any person of life, liberty or property without due process of law petitioner now pleads as a shield against the tax aforesaid.

11th.

Your petitioner shows that it is entitled to a writ of injunction enjoining the said Sheriff and Ex-Officio Tax Collector from
6 advertising the property of your petitioner for the alleged tax delinquency, and from proceeding to sell the same for the alleged tax delinquency, and that this it desires in the premises; and petitioner avers that its interests in the premises exceed the sum of ten thousand dollars as this cause involves not only the acreage tax of two thousand dollars and the penalties thereon but also the right to tax said property for more than thirty years in the future.

Amicable demand is averred to have been made in vain.

Wherefore, the annexed affidavit considered and on petitioner giving bond in the sum fixed by the Court, it prays that a writ of injunction issue in the premises inhibiting and prohibiting George Henderson, Sheriff and Ex-Officio Tax Collector of Iberia Parish, and the Board of Commissioners of the Iberia & St. Mary Drainage District, whereof J. C. Ackers is President, from undertaking to collect the tax herein above referred to and from advertising petitioner's property for the alleged tax delinquency or from proceeding to sell the same; that citation and service hereof issue and be duly made and served in the premises upon the said defendants; that after legal delays and due trial, there be judgment maintaining and perpetuating the writ of injunction sued out, and decreeing your petitioner's property aforedescribed to have been illegally included within the confines of the Iberia & St. Mary Drainage District, and to be free from the tax imposed on the property therein situated, and finally it prays for all other necessary orders and decrees in the premises, and for costs and general and equitable relief.

(Signed) BURKE & BURKE & SMITH,
" FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG.
Attorneys.

7 Before me the undersigned authority personally came and appeared B. B. Myles, who after having been sworn deposes and says:

I am the President of the Myles Salt Co., Ltd.,

All of the allegations of the above and foregoing petition are true and correct.

(Signed) B. B. MYLES.

Sworn to and subscribed before me this 2nd day of May, 1913.

(Signed) CHAS. L. PROVOST,
Notary Public.

Filed May 2nd, 1913.

A. J. MAUMUS, *D'ty C'k.*

Order.

Considering the above and foregoing petition and the annexed affidavit, let a writ of injunction issue as prayed for upon plaintiff

furnishing good and solvent bond as provided for by law and conformably to law in the full sum of $500.00.

Officially at New Iberia, La., this 2nd day of May, 1913.

(Signed) JAMES SIMON, *Judge.*

Filed May 2nd, 1913.

A. J. MAUMUS, *D'ty C'k.*

Injunction Bond.

19th Judicial District Court, State of Louisiana, Parish of Iberia.

MYLES SALT COMPANY, LIMITED,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT et al.

Know all men by these presents, That, we, the Myles Salt Company, Limited, of the Parish of Iberia, as principal, and
8 Jules Dreyfus, of the Parish of Iberia, as Surety, are held and firmly bound unto Board of Commissioners of the Iberia & St. Mary Drainage District, of the Parish of Iberia, in the just and full sum of Five Hundred (500.00) Dollars, for the payment whereof, well and truly to be made, we bind ourselves and our legal representatives firmly by these presents.

Dated and signed in the Parish of Iberia, this 2nd day of May, A. D. 1913.

The condition of this obligation is such that whereas the above bounden, Myles Salt Co., Ltd., Plaintiff in the above numbered and entitled cause, has obtained out of this Hon. the 19th Judicial District Court, for the Parish of Iberia, an order for a writ of injunction inhibiting and prohibiting George Henderson, Sheriff and Ex-Officio Tax Collector of Iberia Parish and the Board of Commissioners of the Iberia & St. Mary Drainage District, from undertaking to collect an ad valorem tax of five mills upon plaintiff's assessment for its land on Weeks' Island and its Salt Mine, claimed by Defendants for four years aggregating the sum of Two Thousand Dollars, and from advertising petitioner's property as a tax delinquent, and from selling said property.

Now therefore, if the said Myles Salt Co. or *his* surety shall pay all damages as said defendant may sustain in case it should be decided that said injunction was wrongfully or improperly obtained, then this obligation to be null and void, otherwise to remain in full force.

(Signed) THE MYLES SALT CO., LTD.,
Per BURKE & BURKE & SMITH.
JULES DREYFUS.

Filed May 2nd, 1913.

A. J. MAUMUS, *D'ty C'k.*

9 19th Judicial District Court, State of Louisiana, Parish of Iberia.

MYLES SALT COMPANY, L'T'D,
VS.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT et al.

Injunction.

To the Board of Commissioners of the Iberia & St. Mary Drainage District, through its proper officer, and to George Henderson, Sheriff of Iberia Parish:

Whereas, it has been made to appear to the Hon. 19th Jud. Dist. Court in and for the Parish of Iberia, by the petition and oath of the Plaintiff in the above entitled suit that the Sheriff of Iberia Parish acting at the instance of the Board of Commissioners of said Iberia & St. Mary Drainage District has demanded an ad valorem tax of five mills upon plaintiff's assessment for its land on Weeks' Island and its salt mine, and in view of its refusal to pay the same is about to advertise petitioner's property as a delinquent for said tax for a period of four years, aggregating the sum of Two Thousand Dollars with the penalties provided for by law to the irrevocable injury of petitioner.

And whereas said Court has granted an injunction in accordance with the prayer of the petition in said suit (a duly certified copy of which is herewith served), injoining and prohibiting you, and each of you, from undertakng to collect the tax herebefore referred to, and from advertising petitioner's property for the alleged tax delinquency or from proceeding to sell the same.

Now therefore, in consideration of the premises, and of the law in such cases made and provided, we do hereby, in the name of the State of Louisiana, strictly injoin and command that you, and each of you, your aiders, and abbettors, do absolutely desist and
10 abstain from undertaking to collect the tax herebefore referred to and from advertising petitioner's property, or from proceeding to sell the same, under penalty of the law, to be levied out of your goods, chattels, lands and tenements.

Witness the Honorable James Simon, Judge of our said Court at New Iberia, La., this 2nd day of May, A. D. 1913.

A. J. MAUMUS,
D'ty Clerk of C'rt.

19th Judicial District Court, State of Louisiana, Parish of Iberia.

MYLES SALT COMPANY
vs.
IBERIA & ST. MARY D. DISTRICT et al.

Motion.

Now into your Honorable Court through counsel comes the defendant who appears herein only for the purpose of this motion, reserving all its rights to answer hereafter in the event that this motion be not sustained, and moves your Honorable Court to dissolve the injunction herein sued out upon the face of the papers for the following reasons, to-wit:

First.

Because the petition upon which the said injunction issued, sets forth no legal cause of action; the demand being predicated solely upon the allegation that no benefit is, has been, or will be, derived by the said property; and which allegation does not propound any cause of action.

Second.

Because the complaint predicated as it is upon the ground set forth in said petition, wherein no other complaint than that of no benefits are pleaded, is an admission that the tax is legal and enforceable upon all the property within the limits of said Drainage District.

11

Third.

Because the ground upon which the plaintiff predicates his injunction is one which has been judicially determined by the Supreme Court of this State as being a legitimate and lawful exercise of the discretionary powers, of the Police Jury in the matter of the creation and delimitation of the Drainage District; the Courts being without power to impugn or to inquire into its motive, where no fraud is alleged.

Fourth.

Because the said petition contains no allegation of fraud and therefore sets forth no grounds upon which the Court can be permitted to inquire or impugn the action of the Police Jury, and hence no cause of action.

Fifth.

Defendant shows that it is entitled to attorney's fees in such sum as may be shown by proof as adequate and reasonable for the dissolution of the injunction.

Wherefore, it prays that this motion be maintained; that the writ of injunction herein sued out be dissolved on the face of the papers,

because the petition sets forth no legal ground or cause of action, and that the suit be dismissed, also as the injunction herein is principal and not incidental, and hence its dissolution leaves no issue before the Court.

Defendant further prays that plaintiff in injunction be condemned to pay attorney's fees for the dissolution of this injunction, in the sum of One Hundred Dollars; that service be duly made and plaintiff ruled to show cause why this injunction should not be dissolved.

And prays for all costs, and general relief.

(Signed) L. T. DULANY, *Attorney.*

12 STATE OF LOUISIANA,
Parish of Iberia:

Before me, the undersigned authority, personally came and appeared Mr. L. T. Dulany for Def't, who upon his oath declared and said that he is the only duly authorized attorney representing the defendant in this case, and that the exception or motion herein filed is not for the purpose of delay but made in good faith. *So*

Sworn to and subscribed before me this the 15th day of May, A. D. 1913.

(Signed) A. J. MAUMUS, *D'ty C'k.*

Order.

Service is hereby ordered, and Plaintiff ruled to show cause on the 23rd day of May, 1913, at 10 o'clock a. m. why the injunction herein sued out should not be dissolved, as prayed for.

Granted officially at New Iberia, La., this the 16th day of May, 1913.

(Signed) JAMES SIMON,
Judge 19th Judicial District Court
of Iberia Parish, La.

NEW IBERIA, LA., May 16th, 1913.

This the Honorable the 19th Judicial District Court of Louisiana, holding sessions in and for the Parish of Iberia met on this day at ten o'clock A. M. pursuant to adjournment.

Present: Honorable James Simon, District Judge presiding.

No. 6171.

MYLES SALT COMPANY, L'T'D,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DIST.

13 Motion to dissolve the Injunction was filed through Counsel L. T. Dulaney, Esq., on behalf of the Defendant Company; and plaintiff was ordered to show cause on the 23rd instant why the Injunction sued out herein should not be dissolved.

A. J. MAUMUS, *D'ty C'k.*

Approved:
JAMES SIMON, *Judge.*

NEW IBERIA, LA., May 23rd, 1913.

This the Honorable the 19th Judicial District Court of Louisiana holding sessions in and for the Parish of Iberia met on this day at ten o'clock A. M. pursuant to adjournment.

Present: Honorable James Simon, District Judge presiding.

No. 6171.

MYLES SALT COMPANY, L'T'D,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

The motion to dissolve came on this day regularly fixed for trial. Present: Porteus R. Burke, Esq., of Counsel for the Plaintiffs; L. T. Dulaney, Esq., of Counsel for the Defendant Moyer; when after hearing the Pleadings — the arguments of Counsel the Court took the motion under advisement:

A. J. MAUMUS, *D'ty Cl'k.*

Approved:
JAMES SIMON, *Judge.*

19th Judicial District Court, State of Louisiana, Parish of Iberia.

No. —.

MYLES SALT COMPANY
vs.
IBERIA & ST. MARY DRAINAGE DISTRICT.

Evidence on Motion to Dissolve Injunction.

14 L. T. Dulany, Esq., attorney for plaintiff in motion.
Burke & Burke & Smith, attorney- for defendant in motion.

Evidence of Plaintiff in Motion.

It is admitted that $100.00 attorney's fees, for the dissolution of the Injunction, on the face of the papers is a reasonable fee.

Defendant offers no evidence.
Evidence closed.

I hereby certify that the above and foregoing is a true and correct transcript of all the evidence adduced on the trial of the foregoing and numbered and entitled matter, as transcribed by me from the notes taken by me on the trial thereof.

In evidence whereof witness my official signature this 10th day of June, 1913.

(Signed) W. J. OSTHEIMER,
Official Stenographer.

It is hereby mutually stipulated and agreed by and between the parties by their undersigned attorneys and counsel that Exhibits A and B to the Petition herein have been and are deemed immaterial to a decision and appeal herein and that the same may be omitted from the record herein and transcript on appeal and that the record and transcript shall be deemed to have like force and effect as if the same had not been omitted.

New Iberia, La., as of June 10, 1913.

(Signed) BURKE, BURKE & SMITH,
" FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
Attorneys and Counsel for the Plaintiff Salt Company.
" L. T. DULANY,
Attorney and Counsel for the Defendant Board et al.

15 NEW IBERIA, LA., June 7th, 1913.

This the Honorable 19th Judicial District Court of Louisiana holding sessions in and for the Parish of Iberia met on this day at 10 o'clock A. M. pursuant to adjournment:

Present: Honorable James Simon, District Judge presiding.

No. 6171.

MYLES SALT COMPANY, LTD.,
VS.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

The motion to dissolve having been heard and submitted, and the Court being of the opinion that the motion was well founded for the reasons orally assigned, It is ordered by the Court that the motion to dissolve be and hereby is maintained, dismissing plaintiff's action at their costs (see decree).

Judgment was read signed and filed.

On motion of Porteus R. Burke Esq. of Counsel for the plaintiff a suspensive and in the alternative a devolutive appeal made returnable to the Honorable Supreme Court of Louisiana on the 5th day of August A. D. 1913 at New Orleans was granted to the Plaintiff upon furnishing Bond in the sum of Twenty five Dollars for the devolutive appeal and in a sum according to law for the Suspensive appeal.

A. J. MAUMUS, *D'ty Cl'k.*

Approved:
JAMES SIMON, *Judge.*

16 STATE OF LOUISIANA,
Parish of Iberia:

19th Judicial District Court.

MYLES SALT COMPANY, LTD.,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DIST.

Reasons.

The defendants move to dissolve the Injunction on various grounds set out in the Motion.

This suit does not differ materially from those set out and Judicially determined by the Supreme Court of the State and reported in the 104th La. 103, Degravelle vs. Iberia & St. Mary Drainage District, herein made defendant,—111 La. 110; and 130 La. 637.

The gist of plaintiff's demand is to the effect that no benefit has been nor will be derived by its property by the general drainage system and the levying and collection of the tax on its property.

This is no longer an open question. It has been judicially settled in the decisions quoted above.

The principle of law laid down by the Courts is, that the creation and determination of Drainage Districts being a legitimate and lawful exercise of the discretionary powers of the Police Jury; that the Courts are without power to impugn or inquire into its motive, where no fraud is pleaded.

In the 130 La. 637, Bernard vs. Bayou Portage Drainage District et al., the Court said: "The matter of the creation and determination of Drainage Districts, within the Parish, was within the discretion of the Police Jury, and the disclosed purpose of the Ordinance enacted by it, for the creation and determination of the District in question, having been the legitimate and lawful one of drawing the lands in the District so created, and the Police having
17 acted within its power, the Courts are without authority to impugn or inquire into its motive, unless fraud or manifest invasion of private right were alleged and proved."

There is no such fraud or invasion of private right alleged in the petition. These are necessary averments to maintain the action and obtain the relief prayed for.

The decision cited by plaintiff, reported in 130 La. 970, Williams vs. Bayou Sale Drainage District, is very different from the De Gravelle case reported in the 104 La. 703, and the cases quoted herein, and was entirely different action from the one at Bar.

The Williams case was one in which the question of sub-drainage districts were concerned, and was made under the law, found in Act 305 of 1908, which has no application here. In that case the Supreme Court said, on rehearing, that the De Gravelle case decision did not apply because it was not a question of complaint that plaintiff's land will not be benefited by a general drainage system, but

that his lands in one sub-division were being taxed for the benefit of lands in other sub-divisions. There were nine sub-divisions, and the bonds were issued for the benefit of two sub-divisions to the prejudice of seven others. There the Court ruled that it would not allow the collection of a special tax upon property in one sub-division, when the tax was to be used to pay for work in other sub-divisions.

The issues here are not at all alike, and the taxes levied and assessed and attempted was collected are under different statutes and for different purposes, and the issues raised have been settled by a line of decisions of the Supreme Court of this State.

This being true, and the necessary averments being wanting to maintain the action and relief demanded, and the issues
18 raised having been Judicially determined, forces me to maintain the motion and dissolve the injunction with damages for attorney's fees in the sum of One Hundred Dollars, and all costs.

(Signed) JAMES SIMON,
Judge 19th Jud. Dist. Court.

STATE OF LOUISIANA,
Parish of Iberia:

19th Judicial District Court.

MYLES SALT COMPANY
vs.
IBERIA & ST. MARY DRAINAGE BOARD OF COMMISSIONERS.

Judgment.

In the above numbered and entitled cause, a motion being made by the defendant to dissolve the injunction sued out for damages in the sum of One Hundred Dollars as attorney's fees, and the said motion having been regularly taken up and tried, and on the trial thereof the law and the evidence being in favor of the mover and against the plaintiff in injunction; it is now therefore ordered and decreed that the said action be and the same is hereby maintained, and the injunction sued out be dissolved upon the face of the pleadings, on the ground that the said petition set forth no legal cause of action.

It is further ordered that the plaintiff in injunction be, and it is hereby condemned to pay attorney's fees for the dissolution of said injunction in the sum of One Hundred Dollars. And that plaintiff's suit be dismissed at its costs. Written reasons assigned.

Done read and signed in open Court on this the 7th day of June, A. D. 1913.

(Signed) JAMES SIMON,
Judge of 19th Judicial District Court of Iberia Parish, Louisiana.

Filed June 7th, 1913.
(Signed) A. J. MAUMUS, *D'ty Cl'k.*

Filed for Record June 16th, 1913, 5 p. m.
(Signed) J. G. LEBLANC, *C'k.*

19 19th Judicial District Court, State of Louisiana, Parish of Iberia.

MYLES SALT COMPANY, LTD.,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DIST.

Know all men by these presents: That we, Myles Salt Company, a Corporation domiciled and doing business in the Parish of Iberia, State of Louisiana, as principal, and —— —— of the Parish of Iberia as surety are held and firmly bound unto J. G. Leblanc, Clerk of said Court, or to his successors in office, his heirs or assigns, in the sum of Two Hundred Dollars ($200.00) for the payment whereof well and truly to be made, we bind ourselves in solido.

Subscribed and dated at New Iberia, La., this 15th day of June, 1913.

Now, the condition, of the foregoing obligation is such that whereas the said Principal herein has obtained an order for a suspensive appeal from a judgment rendered against it in the above entitled and numbered cause on the 7th day of June, 1913, and signed on the 7th day of June, 1913, returnable to the Hon. Supreme Court of Louisiana on the 5th day of August, 1913, sitting at New Orleans, La.,

Now this bond is given as surety that said principal as appellant should prosecute the said appeal and that it shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in said appeal, otherwise that the said surety shall be liable in place.

(Signed) MYLES SALT COMPANY,
Per BURKE & BURKE & SMITH, *Att'ys.*
E. GAJAN.

20 Filed and accepted the 15th day of June, 1913.

(Signed) A. J. MAUMUS,
D'ty Clerk of Court.

STATE OF LOUISIANA,
Parish of Iberia:

I, the undersigned authority duly Commissioned and qualified in and for the Parish and state aforesaid do hereby certify that the above and foregoing Seventeen (17) pages contain a true correct and complete transcript of all documents filed, evidence adduced and proceedings had in a certain cause wherein the Myles Salt Company is the Plaintiff and the Board of Commissioners of the Iberia and St. Mary Drainage District and George Henderson Sheriff of Iberia Parish, are the Defendants under No. 6171 of the Civil Docket of the District Court for Iberia Parish.

In faith whereof witness my signature and seal of office this 4th day of August, A. D. 1914.

(Signed) A. J. MAUMUS,
[SEAL.] *D'ty Cl'k of Court.*

21 PROCEEDINGS HAD IN THE SUPREME COURT OF LOUISIANA

Transcript of Appeal Filed.

Supreme Court of Louisiana.

No. 20,143.

MYLES SALT COMPANY
vs.
BOARD OF COMMISSIONERS, J. C. ACKERS, as President of the Iberia & St. Mary Drainage District, and George Henderson, as Sheriff & ex-Officio Tax Collector of Iberia Parish.

Filed August 6th, 1913.
(Signed) PAUL E. MORTIMER, *Clerk.*

Motion to Advance Cause Filed.

MILES SALT CO.
vs.
THE BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

On motion of L. T. Dulany, Attorney for Defendant, Appellee in the above numbered and entitled cause, suggesting to the Court that the said cause involves the legality and constitutionality of a special tax, the collection of which has been restrained by injunction, and that said cause is under the law (Act 17 of 1876) entitled to be placed upon the Summary Docket of your Hon. Court, and tried by preference,

Wherefore mover prays that said cause be placed upon the Summary Docket of your Honorable Court, and fixed for trial accordingly.

22 And for all necessary orders, and general relief.

(Signed) L. T. DULANY,
Of Counsel.

(Endorsed:) No. 20,143—Miles Salt Co. vs. Board of Commissioners of Iberia & St. Mary Drainage District—Motion to Advance—Filed Dec. 20th, 1913,—(Signed) Paul E. Mortimer, Clerk—Entered Dec. 22, 1913,—(Signed) Paul E. Mortimer, Clerk.

Entering Order to Advance Cause.

(Extract from Minutes.)

At Chambers.

NEW ORLEANS, MONDAY, December 22, 1913.

No. 20143.

MYLES SALT COMPANY
vs.
BOARD OF COMMISSIONERS OF IBERIA & ST. MARY DRAINAGE DISTRICT.

The motion of L. T. Dulany, Esq., counsel for the defendant, appellee, having been favorably considered: It is ordered by the court that the above numbered and entitled cause be advanced on the docket of the court for hearing.

Cause Continued.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, February 17th, 1914.

The Court was duly opened, pursuant to adjournment,—Present—Their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Alfred D. Land, and Walter B. Sommerville, Associate Justices.—Absent:—His Honor:—Olivier O. Provosty, Associate Justice.

23

No. 20143.

MYLES SALT COMPANY
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

This cause not having been reached was ordered by the Court to be continued until to-morrow, Wednesday, February 18th, 1914.

Cause Continued.

(Extract from Minutes.)

NEW ORLEANS, February 18, 1914.

The Court was duly opened, pursuant to adjournment—Present:—Their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe and Walter B. Sommerville, Associate Justices.—Absent:—Their Honors:—Olivier O. Provosty and Alfred D. Land, Associate Justices.

No. 20143.

MYLES SALT COMPANY
VS.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

This cause, not having been reached, was ordered by the Court to be continued until to-morrow, Thursday, February 19th, 1914.

Cause Called, Argued, and Submitted.

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, February 19, 1914.

The Court was duly opened, pursuant to adjournment. Present—Their Honors:—Joseph A. Breaux, Chief Justice. And
24 Frank A. Monroe and Walter B. Sommerville, Associate Justices. Absent:—Their Honors:—Olivier O. Provosty and Alfred D. Land, Associate Justice.

No. 20143.

MYLES SALT COMPANY
VS.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

In this cause counsel for the defendant, Mr. L. T. Dulany having informed the court of the consent of all counsel in the cases fixed for trial before the above numbered cause that he be allowed to argue his side owing to the necessity of his leaving the city for New Iberia, and the court having acquiesced, the cause was, accordingly, taken under consideration by the Court after it had heard the argument of Mr. Dulany, representing the defendant; counsel for the plaintiff having submitted his side of the case.

Final Judgment of Supreme Court.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, March 16th, 1914.

The Court was duly opened, pursuant to adjournment—Present:—Their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Alfred D. Land and Walter B. Sommerville, Associate Justices.—Absent:—His Honor, Olivier O. Provosty, Associate Justice.

His Honor, The Chief Justice, pronounced the opinion and judgment of the Court in the following case:—

No. 20143.

MYLES SALT COMPANY
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

25 For reasons stated, the judgment appealed from is affirmed.

26 (*Opinion of the Court.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, March 16th, 1914.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Alfred D. Land, Walter B. Sommerville, Associate Justices.

Absent: Olivier O. Provosty, Associate Justice.

His Honor, The Chief Justice, pronounced the opinion and judgment of the Court in the following case:

27 Mr. Chief Justice Breaux.

MONDAY, March 16, 1914.

No. 20143.

MYLES SALT COMPANY
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE DISTRICT.

Appeal from the 19th Judicial District Court, Parish of Iberia, Hon. James Simon, Judge.

This action was brought by plaintiff, the owner of property surnamed, Island, for a judgment annulling and setting aside an ad valorem tax of five mills for fifty years. The record consists of a petition by plaintiff and an exception of no cause of action by defendants, in which defendants set forth in detail the different grounds upon which they rest their defense.

The grounds of plaintiff as set forth in its petition are, substantially, that the defendant drainage district was organized years ago to drain the low lands between the Island of plaintiff and the Teche Bayou; that in forming the district there were lateral lines

running not very far from plaintiff's property that were made to deflect at right angle so as to include the Island of plaintiff.

It is a well known fact that the formation of the five Islands following a cordon along the western boundary is a distinct formation from that of the surrounding country. The Islands are high while the marshes and marais, as the name indicates, are low. They are distinct except as they form part of the landscape, one assisting in developing the picturesqueness of the other.

Along the marshes, people have dwelt for many years who seek to drain the low places.

It is clearly alleged in plaintiff's petition that its property is not in any degree advantaged or benefited by the drainage dis-
28 trict. Plaintiff charged that the only purpose in extending the lines around its property, after having deflected for a considerable distance from the direct course, was solely for the benefit of the low lands and not with a view of adopting a general plan of drainage for the benefit of all the other property owners. That the purpose was to obtain a large revenue without once thinking that any part of this revenue would be expended for the drainage of the Island. That an ad valorem tax of five mills for forty years is too much of a burden upon the property without giving one thought to the drainage in so far as it was concerned.

That plaintiff and others could not do otherwise than protest against the imposition of the tax and the issuance of the bonds which the drainage district proposed to issue.

That defendants did not have even a negli-ble concern in plaintiff's drainage; in fact, that plaintiff did not need drainage because the water flows down the slopes of the Island to the neighboring waters without the least aid. That plaintiff's property is the most valuable and the highest assessed of all the property in the district; that it has never received a cent of benefit from the drainage district and never will; that only the lands of others will be benefited; that all of these plans and projects for part of the *part* are unconstitutional and a usurpation of authority and an attempt to take petitioner's property without due process of law in violation of the fourteenth amendment of the constitution.

The defendant, on the other hand, urged that plaintiff had no good cause of action as plaintiff has sought to pitch its suit on the want of benefit to be derived from the tax. That the question has been settled heretofore by the decision of the Court; that the decision contains no allegation of fraud, and, therefore, sets forth no good ground upon which the Court can question the action of the police jury.

29 Defendant in its exception claims attorneys' fees as damages for the dissolution of the injunction.

The Judge of the District Court found, as urged by defendant, that the issues had been settled by repeated decisions of the Courts against the plaintiff, and that also because a necessary averment of fraud and wrong or unauthorized invasion of private rights, was wanting to sustain the motion to dissolve the injunction, the Court dismissed the action and awarded damages for fee of attorney.

The District Court accepted as correct the view that the decisions

heretofore rendered settle the question forever that the local authorities as to drainage have the absolute right to organize drainage districts and give them shape and boundary lines as they choose.

It is upon that theory that the case is before us for decision; defendant claiming the unlimited authority of the drainage board in forming districts and the plaintiff denying that the authority is not extended as claimed by the defendant.

Without an element of fraud alleged, the Court properly dismissed the suit.

The Court in the case of Bernard vs. Bayou Portage Drainage District, 130 La. 637, among other reasons given for the decision said that as no fraud or wrong had been made to appear it would not interpose authority that would result in destroying a district.

The situation is very similar in this case except that it is a stronger case in that fraud was alleged in the cited case.

Here no fraud has been alleged nor its equivalent; besides, the question has been frequently decided that the Court would not interfere with the action of local authorities in establishing districts; unless it is made to appear that the case presented differs materially from those heretofore decided, the Court will have to adhere to its former ruling upon the subject.

30 This, we take it, cannot be made to appear unless it is evident that fraud has been attempted or actually committed.

Again, in the case of the St. Mary Drainage District, 131 La., fraud was charged. The local authorities were endeavoring to reclaim a small part of a district without regard to the reclamation in a very large remaining area.

There was substantially discrimination.

Here the issues do not present that question.

Under well established jurisprudence, there must be more than an ordinary error alleged.

At this time, in the history of the jurisprudence of this State, it is of great importance not to set aside that which has received repeated approval. Hence the necessity of more than ordinary allegations. It is not a question of ordinary error.

Without going further into the question presented in an exception, we will sustain the District Court's ruling.

For reasons stated, the judgment appealed from is affirmed.

Syllabus.

A property owner, whose property has been included within a drainage district, cannot, without alleging fraud in the formation of the district, maintain a suit to have the district set aside on the mere allegation that his property will not be benefited by the expenditure of the drainage district tax fund to which he is made to contribute.

A true copy,
Clerk's Office, New Orleans, —— —, 1914.

—— ——, *Clerk.*

[Endorsed:] 20143. Myles Salt Co.

31 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing Thirty (30) pages contain a full, true and complete copy of the proceedings had in the Nineteenth Judicial District Court for the Parish of Iberia, in a certain suit wherein Myles Salt Company, was plaintiff, and Board of Commissioners, J. C. Ackers, as President of the Iberia & St. Mary Drainage District and George Henderson as Sheriff and ex Officio Tax Collector of Iberia Parish, were defendants; and, also, of all the proceedings had in this Supreme Court on the appeal taken by said plaintiff, which appeal is now on the files thereof, under No. 20,143.

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court, at the city of New Orleans, this the 28th day of April, Anno Domini, one thousand, nine hundred and fourteen, and of the Independence of the United States of America, the one hundred and thirty-eighth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

32 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 28th day of April, Anno Domini, one thousand, nine hundred and fourteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

33 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of

Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 28th day of April, Anno Domini, one thousand, nine hundred and fourteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Supreme Court of the State of Louisiana.

34 No. 20143.

MYLES SALT CO., LTD.,
vs.
BOARD OF COMMISSIONERS OF THE IBERIA & ST. MARY DRAINAGE District & George Henderson, Sheriff & ex-Officio Tax Collector, etc.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the Myles Salt Co., plaintiff in error in this cause, & for grounds of error in support of its writ of error sued out this 11th day of April 1914 to reverse the judgment & decree of the Honorable the Supreme Court of Louisiana rendered on March 16th, 1914, pleads & says:

1st. That the sole question in this case was a federal question, i. e. whether the plaintiff was deprived of its property without due process of law in contravention of that clause of the 14th Amendment to the Constitution of the United States which declares that no state shall deprive any person of life, liberty or property without due process of law, by the tax levied by the Board of Commissioners of the Iberia & St. Mary Drainage District, which question the court does not state or decide at all.

2d. That the Supreme Court of Louisiana erred in not holding that the ad valorem tax of five mills for forty years levied upon the property of plaintiff for the purpose of constructing & main-
35 taining a system of public drainage from which neither the plaintiff nor its property does receive or ever can receive any benefit whatever, is a taking of the defendant's property without due process of law in violation of that clause of the 14th amendment to the Constitution of the United States, which prohibits any state from depriving any person of life, liberty or property without due process of law.

3d. That the Supreme Court of Louisiana erred in not holding that the inclusion of plaintiff's property in the Iberia & St. Mary drainage district was a fraud in law & in fact in the plaintiff's rights & that the inclusion of said property in said district for the sole pur-

pose of taxing it to construct a public system of drainage from which neither the plaintiff nor its property does now or can ever receive any benefit, was a taking of defendant's property without due process of law in contravention of the said 14th amendment to the constitution of the United States.

4th. That the Supreme Court of Louisiana erred in holding that fraud must be alleged before a litigant can complain that his property has been taken without due process of law in violation of the
36 14th amendment to the Constitution of the United States.

5th. That even if the law be that fraud must be alleged before a litigant can complain that the State has taken his property without due process of law in violation of the 14th amendment to the constitution of the United States, the averments of the plaintiff's petition state a case of legal & actual fraud, & the Supreme Court of Louisiana erred in not so holding & in not giving plaintiff the relief demanded.

Where- the Myles Salt Co. prays that the judgment of the Supreme Court of Louisiana may be reversed & the cause may be remanded to the District Court of Iberia Parish, Louisiana, with instructions to overrule the defendant's exceptions, to reinstate the injunction & for such further proceedings as the law may require, & petitioner will ever pray.

FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG, *Att'ys Plaintiff in Error.*

EDGAR H. FARRAR, *Counsel.*

[Endorsed:] No. 20,143. Supreme Court, Louisiana. Myles Salt Co., Ltd., vs. Board of Commissioners of the Iberia & St. Mary Drainage Dist. et als. Assignments of Error. Filed April 11th, 1914. Paul E. Mortimer, Clerk.

37 (*Copy of Bond for Writ of Error.*)

UNITED STATES OF AMERICA:

Know all men by these presents, That we, the Myles Salt Co. Ltd. as principal and Edgar Howard Farrar as surety, are held and firmly bound, jointly and severally unto the Board of Commissioners of the Iberia & St. Mary Drainage District and Geo. Henderson, Sheriff & Ex-Officio Tax Collector of the Parish of Iberia, in the sum of Six Thousand Dollars, lawful money of the United States of America, to be paid to the said Board of Commissioners of the Iberia & St. Mary Drainage District and the said Geo. Henderson, Sheriff & Ex-Officio Tax Collector of the Parish of Iberia, heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents;

Sealed with our seals, and dated the 11th day of April, in the year of our Lord, nineteen hundred and fourteen.

Whereas, the said Myles Salt Co. Ltd. having heretofore, to-wit:

on the 11th day of April, 1914, taken a writ of error to the Supreme Court of the United States, from and to reverse the decree rendered on the 16th day of March, 1914, by the Supreme Court of the State of Louisiana, in the suit of Myles Salt Co. Ltd. vs. The Board of Commissioners of the Iberia & St. Mary Drainage District et als., No. 20,143 of the docket thereof.

Now the condition of the above obligation is, That if, the above bounden Myles Salt Co. shall prosecute its said writ of error to effect, and shall answer all damages and costs if it shall fail to make
38 good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) MYLES SALT CO., LTD., [L. S.]
" By B. B. MYLES, *President.* [L. S.]
" EDGAR HOWARD FARRAR. [L. S.]

Signed, Sealed and Delivered in the presence of
(Signed) JOHN A. KLOTZ.

Approved by
(Signed) F. A. MONROE,
[SEAL.] *Chief Justice of the State of Louisiana, N. O., Apl. 11th,* 1914.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, ss:

Personally appeared, Edgar Howard Farrar, who being duly sworn deposes and says that he is the surety on the within bond, that he resides in the City of New Orleans & State of Louisiana, and is worth the full sum of Six Thousand Dollars, over and above all of his debts and liabilities and property exempt from execution.

(Signed) EDGAR H. FARRAR.

Subscribed and Sworn before me, this 11th day of April, 1914.

(Signed) JOHN A. KLOTZ,
[SEAL.] *Deputy Clerk Supreme Court of Louisiana.*

(Endorsed:) No. 20,143—Supreme Court of Louisiana—Myles Salt Co. Ltd. vs. Board of Commissioners of the Iberia & St. Mary Drainage Dist. et als.—Bond for writ of error.—Filed Apl. 11th, 1914.—(Signed) Paul E. Mortimer, Clerk.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana, No. 20,143 of the Docket of said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between

the Myles Salt Co. Ltd., the plaintiff, and the Board of Commissioners of the Iberia and St. Mary Drainage District, and George Henderson Sheriff & ex officio Tax Collector of the Parish of Iberia, defendants wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Myles Salt Co. Ltd. as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the eleventh day of April, in the year of our Lord one thousand nine hundred and fourteen.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by
F. A. MONROE,
Chief Justice of the Supreme Court of Louisiana, to Operate as a Supersedeas.

[Endorsed:] No. 20,143. Supreme Court of Louisiana. Myles Salt Co. Ltd. versus Board of Commissioners of the Iberia & St. Mary Drainage District et als. Writ of Error. Original Writ of Error. Filed Apl. 11, 1914. Paul E. Mortimer, Clerk. Farrar, Jonas, Goldsborough & Goldberg, Atty's Pl't'ff in Error.

41 (*Certificate of Lodgment.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me as such clerk, on April 11th, 1914, in the cause entitled:—Myles Salt Company, Plaintiff-in-error, vs. Board of Commissioners, J. C. Ackers, as President, of the Iberia & St. Mary Drainage District and George Henderson as Sheriff and Ex-Officio Tax Collector of Iberia Parish, Defendants-in-error:—

First. The original assignment of error as herein set forth.
Second. The original bond of which a copy is herein set forth.
Third. The original writ of error, as herein set forth.
Fourth. One copy of the writ of error to be lodged in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this the 28th day of April, A. D. 1914.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

42 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to George Henderson, Sheriff and ex officio Tax Collector of the Parish of Iberia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein the Myles Salt Co. is plaintiff in error, and the Board of Commissioners of the Iberia and St. Mary Drainage District and George Henderson, Sheriff and ex officio Tax Collector of the Parish of Iberia are defendants in error to show cause, if any there be, why the judgment rendered against the said Myles Salt Co. Ltd. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 11th day of April in the year of our Lord one thousand nine hundred and fourteen.

[Seal Supreme Court of the State of Louisiana.]

F. A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

STATE OF LOUISIANA,
Parish of Iberia:

Personally came and appeared before me, the undersigned authority, Ventress J. Smith, who being duly sworn, deposes and says that on the 25th day of April 1914, he handed to George Henderson, Sheriff and Ex-Officio Tax Collector of the Parish of Iberia, in person the duplicate original of the within citation in error.

VENTRESS J. SMITH.

Subscribed and sworn to before me this 27th day of April 1914.

[Seal Clerk of District Court, Parish of Iberia, La.]

J. G. LE BLANC,
Clerk of Court.

[Endorsed:] Supreme Court of the State of Louisiana. No. 20143. Myles Salt Co., Ltd., vs. Board of Commissioners of the Iberia & St. Mary Drainage District. Citation in error. Return on Citation. Filed Apl. 28, 1914. Paul E. Mortimer, Clerk.

43 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to the Board of Commissioners of the Iberia and St. Mary Drainage District, through its proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein the Myles Salt Co. is plaintiff in error and the Board of Commissioners of the Iberia and St. Mary Drainage District and George Henderson, Sheriff & Ex Officio Tax Collector of the Parish of Iberia are defendants in error, to show cause, if any there be, why the judgment rendered against the said Myles Salt Co. Ltd. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 11th day of April in the year of our Lord one thousand nine hundred and fourteen.

[Seal Supreme Court of the State of Louisiana.]

F. A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

STATE OF LOUISIANA,
Parish of Iberia:

Personally came and appeared before me, the undersigned authority, Ventress J. Smith, who being sworn, deposes and says that

on the 27th day of April 1914, he handed to Louis R. Moresi, Secretary of the Board of Commissioners of the Iberia & St. Mary Drainage District, in person the duplicate original of the within citation in error, having first ascertained that J. C. Akers the President of said Board of Commissioners, was not in the Parish of Iberia.

VENTRESS J. SMITH.

Subscribed and sworn to before me, this 27th day of April 1914.

[Seal Clerk of District Court, Parish of Iberia, La.]

J. G. LE BLANC,
Clerk of Court.

[Endorsed:] Supreme Court of the State of Louisiana. No. 20,143. Myles Salt Co., Ltd., vs. Board of Commissioners of the Iberia & St. Mary Drainage District et al. Citation in error. Return on Citation. Filed Apl. 28, 1914. Paul E. Mortimer, Clerk.

44 (*Return to Writ.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Louisiana, in the city of New Orleans, this April 28th, 1914.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 24,197. Louisiana Supreme Court. Term No. 141. Myles Salt Company, Limited, plaintiff in error, vs. The Board of Commissioners of the Iberia and St. Mary Drainage District and George Henderson, sheriff and ex officio tax collector of the parish of Iberia. Filed May 4th, 1911. File No. 24,197.

2

Office Supreme Court, U. S.
FILED
DEC 13 1915
JAMES D. MAHER
CLERK

No. 141.

Supreme Court of the United States

OCTOBER TERM, 1915.

MYLES SALT COMPANY, LIMITED,

versus

BOARD OF COMMISSIONERS OF IBERIA AND ST. MARY DRAINAGE DISTRICT, *ET ALS.*

Error to the Supreme Court of Louisiana.

BRIEF FOR MYLES SALT COMPANY, LIMITED, COMPLAINANT AND PLAINTIFF IN ERROR.

EDGAR H. FARRAR,
Counsel for Plaintiff in Error.

Hauser Printing Co., "The Legal Printers," 720 Poydras St., N. O., La.

No. 141

Supreme Court of the United States

MYLES SALT COMPANY, LIMITED,

versus

BOARD OF COMMISSIONERS, ETC.

Index of Subjects and List of Cases Referred to.

SUBJECT INDEX.

FIRST. General Statement of Case, showing that the questions are all sharply defined Federal questions (p 1 to 2).

SECOND. Special statement of case, giving (a) history of statutes under which defendant acted, and how its grievance arises (pp. 2, 3 and 4); (b) statement of substantial averments of petition (p. 5 to 8); (c) statement of demurrers, general and special (p. 9).

THIRD. Reasons assigned by Louisiana Courts for denying the demand (pp. 12 to 15).

FOURTH. Assignments of error (pp. 9-10).

FIFTH. Discussion of cases cited by Supreme Court of Louisiana in support of its judgment (pp. 16 to 18).

SIXTH. Discussion of proposition that it is necessary to aver fraud in order to plead the shield of the Constitution of the United States against the taking of a litigant's property without due process of law (p. 19).

SEVENTH. If averments of fraud are necessary, the averments of intentional wrong done by the defendant in including petitioner's property within a drainage district for the sole purpose of taxing it for the sole benefit of the other property holders in the district, and with the intention of not giving it any benefit of the public drainage plan, a system which by the physical constitution of the locality could not benefit the plaintiff or its property, directly or indirectly, state a case of legal and constructive fraud (pp. 22-23).

EIGHTH. As none of the statutes of Louisiana make provision for a hearing by the property owner in the delimitation of a drainage district, and as no hearing was had in fact in the delimitation of this district, the plaintiff has a right to be heard in the Courts (p. 23).

NINTH. The drainage tax was in the nature of a local assessment, based on some benefit to the property taxed. This is the law of Louisiana; *Board of Levee Commissioners vs. Lorio Bros.*, 33 La. An. 276; *Henry Charnock vs. Fordoche, etc., Special Levee District*, 38 La. An. 323; *Williams vs. Board of Commissioners*, 130 La. 969, (pp. 23-24).

TENTH. The above is the rule to be applied in the enforcement of the Fourteenth Amendment to the Constitution of the United States, where the action of a State in assessing such a tax is arbitrary and confiscatory. *Norwood vs. Baker*, 172 U. S. 260, as explained by *French vs. Barber Asphalt Paving Co.*, 181 U. S. 324; *Tonawanda vs. Lyon*, 181 U. S. 389; *Cass Farm Co. vs. Detroit*, 181 U. S. 396; *Detroit vs. Parker*, 181 U. S. 399, and as re-affirmed in *Union Transit Co. vs. Kentucky*, 199 U. S. 194 (pp. 24-26). And the Supreme Court of Louisiana itself applied this doctrine in a drainage case where the property in one part of a district was being taxed for the sole benefit of property in another part of the district, *Williams vs. Board of Commissioners*, 130 La. 969 (p. 26).

ELEVENTH. The proposition that legislative discretion in delimiting a district within which local assessments are to be levied, can be exercised in an arbitrary and confiscatory way and the courts have no authority to right the wrong, is distinctly repudiated by this Court in *Norwood vs. Baker* and *Union Transit Co. vs. Kentucky* (*supra*) (pp. 27-28).

TWELFTH. The peculiar facts of this case, as averred in the plaintiff's petition, constitute a taking of property without due process of law as flagrant and as manifest as those in the *Norwood case* (p. 28).

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No. 141.

Supreme Court of the United States

OCTOBER TERM, 1915.

MYLES SALT COMPANY, LIMITED,

versus

BOARD OF COMMISSIONERS OF IBERIA AND ST. MARY DRAINAGE DISTRICT, *ET ALS.*

Error to the Supreme Court of Louisiana.

BRIEF FOR MYLES SALT COMPANY, LIMITED, COMPLAINANT AND PLAINTIFF IN ERROR.

GENERAL STATEMENT OF CASE.

The issues in this case are sharply defined Federal questions. First, is it permissible under the Fourteenth Amendment to the Constitution of the United States for

State authorities to levy a local assessment on an island to construct and maintain a public system of drainage on the mainland, from which system the island does not and can not receive any benefit directly or indirectly, and from which it was not intended that it should receive any benefit when the district was delimited? Second, before a litigant can get protection under the amendment to the Constitution of the United States is it necessary to aver that the complainant's rights have been *fraudulently* taken from him? Third, is it not sufficient to aver the facts out of which the deprivation of rights arise, and let those facts speak for themselves, without qualifying the facts with denunciatory and declamatory adjectives?

SPECIAL STATEMENT OF THE CASE.

It is a matter of ordinary geographic knowledge that all of the lands in the valleys of the rivers of Louisiana—the Mississippi and its tributaries, the Tensas, the Bayou Macon, the Ouachita, the Black, the Red, the Atchafalaya, the Bayous Teche, Lafourche, Plaquemines and Terrebonne—and large portions of the flat lands adjacent to the Gulf Coast, are subject, the former to fluvial and the latter to tidal, overflow, and must be leveed and drained by systems of general and special public levees and drains.

Consequently there has long been provisions in the laws of Louisiana for general and special levee districts and for special drainage districts, and in each district special taxes are levied on the property situated in each district, for the purpose of constructing and maintaining the public works dedicated to the specific purpose of keeping out overflow or carrying off water.

As to drainage districts this legislation began by Act No. 107 of 1888 (Acts of 1888, p. 172), which authorized the Police Juries to divide their respective parishes into drainage districts, to appoint commissioners for each district, and permitting the *land owners* of each district to vote each year by a two-thirds majority a tax not to exceed 15 mills on all the assessed property in each district, the proceeds to be used in opening all natural drains and in cutting and opening new drains where necessary.

By Act No. 83 of 1890 (Acts 1890, p. 88) the voting power was placed in *"the property tax payers"* instead of *"land owners,"* and by Act No. 142 of the same year (Acts 1890, p. 181) the words "property tax payers" were stricken out and "land owners" restored.

By Act No. 37 of 1894 (Acts 1894, p. 40) the voting power was given to "taxpayers owning immovable property," including women, non-residents, minors and interdicts acting through their tutors and curators, but not including corporations, and the tax was confined to immovable property.

By Article 281 of the Constitution of 1898 drainage districts were authorized, by the vote of a majority of the property-tax payers qualified as electors under the Constitution and laws of the State, to issue bonds to the extent of one-tenth of the assessed value of the property within the district, the proceeds to be devoted to the construction of drainage works, the title to which shall vest in the drainage district. These taxes were to be levied on all property subject to taxation in the district and were not to exceed 5 mills per annum. The bonds were to run not more than forty years and to bear not more than 5 per cent. interest.

By Act No. 12 of 1900 (Acts 1900, p. 12) all of the provisions of previous statutes were consolidated and elabo-

rated, and it was provided that when the drainage of any locality is such that in the opinion of the Police Juries of the respective parishes it become necessary to organize or create a drainage district composed partly of land situated in adjoining parishes, then such drainage district could be created by joint action of the Police Juries of the respective parishes. The drainage districts were authorized to issue bonds for drainage purposes and levy 5 mills tax on all property subject to taxation situated in the district.

This statute was amended in details not pertinent to this cause and re-enacted by Act No. 159 of 1902 (Acts 1902, p. 293) and by Act No. 317 of 1910 (Acts 1910, p. 542).

Acting under these statutes, the Police Juries of the two adjoining Parishes of Iberia and St. Mary organized a drainage district of certain lands located in each parish, lying between the Bayou Teche and the bays and marshes fringing the shores of the Gulf of Mexico, and named it "Iberia and St. Mary Drainage District." After the organization of the district an election was called, a bond issue was voted, and an ad valorem tax of 5 mills was imposed on all property in the district for forty years—all against the protest of the owners of Week's Island. No attempt was made for more than four years to collect this special tax, which amounted to about $500 per annum. Thereupon, under instructions from the Board of Commissioners of the drainage district, the Sheriff of Iberia Parish was about to advertise and sell Week's Island to pay the arrears of this special tax amounting to $2,000, with the interest and penalties provided by law, when this proceeding was taken by the Myles Salt Company, Limited, to enjoin the Sheriff, and to have it decreed that the property of the Myles Salt Company, Limited, was illegally included within the confines of

the Iberia and St. Mary Drainage District, and to be free from the drainage tax of 5 mills levied upon it.

The substantial averments of the petition are:

FIRST. That the drainage district in question was organized at the instigation of interested individuals for the purpose of drainage into the bayous and marshes surrounding Week's Island certain lands lying between Bayou Teche and the marshes aforesaid.

SECOND. That petitioner is engaged in mining rock salt from a deposit situated on Weeks Island, the whole of which deposit it owns, together with 100 acres of the surface rights.

THIRD. That Weeks Island, on which the salt mine is located, is one of a chain of islands along the coast of Vermilion Bay, physiographically termed uplands, or hills, affording the highest uniform elevation above sea level in southwest Louisiana; that this island arises abruptly on the bay coast to an elevation of 175 feet or more, and that it is surrounded on one side by a deep bayou known as Week's Bayou, on another side by another bayou, on the rear by a salt water marsh separating it from the mainland, and on the front by Vermilion Bay, with a small strip of salt water marsh intervening; and is peculiarly an island of unique formation.

FOURTH. That the topography of this island is high and rolling, the drainage excessive and the washing and erosion a serious problem.

FIFTH. That all the territory lying between the island and Bayou Teche, comprising a populous and thickly settled country (excluding the sea marsh subject to tidal overflow,

which surrounds the island), are low lands, as contradistinguished from the island as high lands, reaching a maximum elevation of about 15 feet above sea level, as against a maximum elevation for Week's Island of 175 to 200 feet above sea level, and the drainage of all this low-land territory leads to the tidal overflow marshes lying between the island and the mainland.

SIXTH. That Weeks Island is the most valuable and highest assessed piece of property located within the limits of the drainage district, and that it was included in said district, not in the exercise of a sound and legal legislative discretion, but only with the view of deriving revenue therefrom solely for the benefit of the other properties in the district, and not upon the theory that a general scheme of drainage would enure to the benefit of all the property in the district, even indirectly. That in pursuance of the scheme to effect a system of drainage for the territory between Weeks Island and the Bayou Teche an election was called, a bond issue was authorized and a 5-mill tax for forty years was imposed on the property in the district, all against the protest of the parties interested in Weeks Island.

SEVENTH. That neither in the organization of the district nor in the submission of the proposition to the qualified voters was it intended, nor has it ever been intended, nor was it possible, nor is it possible to give any benefits of the drainage scheme to Weeks Island, or to the salt deposit thereon, directly or indirectly, and that its inclusion within the confines of said drainage district was solely and only for the purpose of deriving revenue therefrom, to the end of granting a special benefit to the other land subject to be improved by drainage without any benefit whatever to the petitioner or to its property.

EIGHTH. That the so-called drainage tax is not in its nature and essence a tax in the ordinary sense of that word, but it is a forced local contribution which can have no legal basis except upon the fact that the property upon which it is levied derives a benefit from the contribution or tax, and that the property of your petitioner—the most valuable and the highest assessed piece of property in the district—has never received a single cent of benefit from the drainage system constructed and maintained in said drainage district, and never can or will in the future receive any benefit whatever from said drainage system.

NINTH. That the action and conduct of the Police Juries of the Parishes of Iberia and St. Mary in organizing said drainage district, and the subsequent action of the Board of Commissioners of said drainage district, in so far as the inclusion of Weeks Island in said district, and especially the salt deposit thereon, was concerned, only for the benefit by the other lands in the district, was an unconstitutional usurpation of authority, and was and is an effort to take petitioner's property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, which prohibits any State from depriving any person of life, liberty or property without due process of law.

TENTH. That for these reasons it has uniformly refused to pay said tax, basing its refusal to pay the same on its constitutional rights not to be disturbed in its property rights without due process of law, and that at no time prior to the present year had any effort been made to collect the same, but that the Sheriff and Ex-officio Tax Collector of the Parish of Iberia, at the instigation of the Board of Commissioners of the drainage district, has demanded

said tax, and in view of its refusal to pay the same is about to advertise petitioner's said property as a delinquent for said tax for a period of four years, aggregating $2,000, with interest and penalties; that the conduct of the Board of Commissioners and the Tax Collector is a flagrant infringement of petitioner's constitutional rights and immunities, and is an unwarranted assumption of authority which beclouds petitioner's title, places a great burden upon it, affects its commercial value, and is an attempt to take the same without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

ELEVENTH. That the advertisement of said property for a tax delinquency will materially and irrevocably damage said property by beclouding the title and affecting its value, and that a sale for tax delinquency will aggravate the situation and will be the taking of said property without due process of law, in violation of that clause thereof which prohibits any State from depriving any person of life, liberty or property without due process of law, which amendment petitioner now pleads as a shield against the tax aforesaid.

The relief prayed for was a writ of injunction against the Tax Collector and the drainage district prohibiting them from collecting the tax, from advertising or selling the property; that on final hearing the injunction be perpetuated and it be decreed that petitioner's property was illegally included within the confines of the Iberia and St. Mary Drainage District, and to be free from the tax imposed on the property therein situated.

The preliminary injunction was issued by the court on bond.

The defendants appeared and moved for the dissolution of the injunction on the face of the papers on the grounds:

FIRST. That the petition sets forth no legal cause of action, the demand being predicated solely upon the allegation that no benefit is, has been or will be derived by the property, which allegation does not propound a cause of action.

SECOND. Because the complaint predicated upon the ground of no benefits is an admission that the tax is legal and enforceable upon all property within the limits of the district.

THIRD. Because the ground on which plaintiff predicates his injunction is one which has been judicially determined by the Supreme Court of Louisiana as being a legitimate and lawful exercise of the discretionary powers of the Police Jury in the matter of the creation and delimitation of the drainage district; the courts being without power to impugn or inquire into its motive, where no fraud is alleged.

FOURTH. Because said petition contains no allegation of fraud and therefore sets forth no grounds upon which the court can be permitted to inquire into or to impugn the action of the Police Jury, and hence no cause of action.

The prayer was that the writ be dissolved on the face of the papers, and the suit dismissed, with $100 damages as attorney's fees for dissolving the injunction.

The court below sustained this motion, dissolved the writ with $100 damages, and dismissed the suit.

An appeal was taken to the Supreme Court of Louisiana, which affirmed this judgment, and the plaintiff sued out a writ of error to this court and assigns the following errors:

FIRST. That the sole question in this case was a Federal question—*i. e.*, whether the plaintiff was deprived of its

property without due process of law in contravention of that clause of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty or property without due process of law, by the tax levied by the Board of Commissioners of the Iberia and St. Mary Drainage District, which question the court does not state or decide at all.

SECOND. That the Supreme Court of Louisiana erred in not holding that the *ad valorem* tax of 5 mills for forty years levied upon the property of plaintiff for the purpose of constructing and maintaining a system of public drainage, from which neither the plaintiff nor its property does receive or ever can receive any benefit whatever, is a taking of the defendant's property without due process of law, in violation of that clause of the Fourteenth Amendment to the Constitution of the United States, which prohibits any State from depriving any person of life, liberty or property without due process of law.

THIRD. That the Supreme Court of Louisiana erred in not holding that the inclusion of plaintiff's property in the Iberia and St. Mary Drainage District was a fraud in law and in fact in the plaintiff's rights, and that the inclusion of said property in said district for the sole purpose of taxing it to construct a public system of drainage from which neither the plaintiff nor its property does now or can ever receive any benefit, was a taking of defendant's property without due process of law, in contravention of the said Fourteenth Amendment to the Constitution of the United States.

FOURTH. That the Supreme Court of Louisiana erred in holding that fraud must be alleged before a litigant can complain that his property has been taken without due

process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

FIFTH. That even if the law be that fraud must be alleged before a litigant can complain that the State has taken his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, the averments of the plaintiff's petition state a case of legal and actual fraud, and the Supreme Court of Louisiana erred in not so holding and in not giving plaintiff the relief demanded.

ARGUMENT.

The plaintiff in this case did not invoke for its protection any provision of the Constitution and laws of the State of Louisiana.

It did not make any attack upon any law of the State of Louisiana or of any of its subdivisions.

Its sole claim is that, in the execution of the powers granted to the Police Juries of the Parishes of Iberia and St. Mary authorizing them to constitute and define the limits of a joint drainage district, and to levy a tax in that district to be expended in the erection and maintenance of a system of public drainage works in that district, those Police Juries violated the Fourteenth Amendment to the Constitution of the United States by including in that district plaintiff's property, which by its physical situation and constitution is as far removed from any problem of drainage within that district as if it were not within the political jurisdiction of the Police Juries.

The pleadings in this case were deliberately cast in this form so as to exclude every question of local or State law and to compel the consideration and decision of the Federal question only.

The court below disposed of the case, saying:

"The gist of plaintiff's demand is to the effect that no benefit has been nor will be derived by its property by the general drainage system and the levying and collection of the tax on its property.

"This is no longer an open question. It has been judicially settled in the decisions quoted above.

"The principal of law laid down by the courts is, that the creation and determination of drainage districts being a legitimate and lawful exercise of the discretionary powers of the Police Jury, that the courts are without power to impugn or inquire into its motive, where no fraud is pleaded.

"In the 130 La. 637, *Bernard vs. Bayou Portage Drainage District et al.*, the Court said: 'The matter of the creation and determination of drainage districts, within the parish, was within the discretion of the Police Jury, and the disclosed purpose of the ordinance enacted by it, for the creation and determination of the district in question, having been the legitimate and lawful one of drawing the lands in the district so created, and the Police having acted within its power, the courts are without authority to impugn or inquire into its motive, unless fraud or manifest invasion of private right were alleged and proved.'

"There is no such fraud or invasion of private right alleged in the petition. These are necessary averments to maintain the action and obtain the relief prayed for.

"The decision cited by plaintiff, reported in the 130 La. 970, *Williams vs. Bayou Sale Drainage District*, is very different from the *De Gravelle case*, reported in the 104 La. 703, and the cases quoted herein, and was entirely different action from the one at bar.

"The *Williams case* was one in which the question of sub-drainage districts were concerned, and was made under the law found in Act 305 of 1908,

which has no application here. In that case the Supreme Court said, on rehearing, that the *De Gravelle case* decision did not apply, because it was not a question of complaint that plaintiff's land will not be benefited by a general drainage system, but that his lands in one sub-division were being taxed for the benefit of lands in other sub-divisions. There were nine sub-divisions, and the bonds were issued for the benefit of two sub-divisions, to the prejudice of seven others. There the Court ruled that it would not allow the collection of a special tax upon property in one sub-division when the tax was to be used to pay for work in other sub-divisions.

"The issues here are not at all alike, and the taxes levied and assessed and attempted was collected are under different statutes and for different purposes, and the issues raised have been settled by a line of decisions of the Supreme Court of this State."

The Supreme Court of Louisiana disposed of the case, saying:

"The grounds of plaintiff as set forth in its petition are, substantially, that the defendant drainage district was organized years ago to drain the low lands between the island of plaintiff and the Teche Bayou; that in forming the district there were lateral lines running not very far from plaintiff's property that were made to deflect at right angle so as to include the island of plaintiff.

"It is a well-known fact that the formation of the five islands following a cordon along the western boundary is a distinct formation from that of the surrounding country. The islands are high, while the marshes and marais, as the name indicates, are low. They are distinct except as they form part of the landscape, one assisting in developing the picturesqueness of the other.

"Along the marshes people have dwelt for many years, who seek to drain the low places.

"It is clearly alleged in plaintiff's petition that its property is not in any degree advantaged or benefited by the drainage district. Plaintiff charged that the only purpose in extending the lines around its property, after having deflected for a considerable distance from the direct course, was solely for the benefit of the lowlands and not with a view of adopting a general plan of drainage for the benefit of all the other property owners. That the purpose was to obtain a large revenue without once thinking that any part of this revenue would be expended for the drainage of the island. That an *ad valorem* tax of 5 mills for forty years is too much of a burden upon the property, without giving one thought to the drainage in so far as it was concerned.

"That plaintiff and others could not do otherwise than protest against the imposition of the tax and the issuance of the bonds which the drainage district proposed to issue.

"That defendants did not have even a negligible concern in plaintiff's drainage; in fact, that plaintiff did not need drainage, because the water flows down the slopes of the island to the neighboring waters without the least aid. That plaintiff's property is the most valuable and the highest assessed of all the proerty in the district; that it has never received a cent of benefit from the drainage district, and never will; that only the lands of others will be benefited; that all of these plans and projects for part of the *part*, are unconstitutional, and an usurpation of authority and an attempt to take petitioner's property without due process of law, in violation of the Fourteenth Amendment of the Constitution.

"The defendant, on the other hand, urged that plaintiff had no good cause of action, as plaintiff has sought to pitch its suit on the want of benefit to be

derived from the tax. That the question has been settled heretofore by the decision of the court; that the decision contains no allegation of fraud, and, therefore, sets forth no good ground upon which the court can question the action of the Police Jury.

"Defendant in its exception claims attorney's fees as damages for the dissolution of the injunction.

"The Judge of the District Court found, as urged by defendant, that the issues had been settled by repeated decisions of the courts against the plaintiff, and that also because a necessary averment of fraud and wrong or unauthorized invasion of private rights was wanting to sustain the motion to dissolve the injunction, the Court dismissed the action and awarded damages for fee of attorney.

"The District Court accepted as correct the view that the decisions heretofore rendered settle the question forever that the local authorities as to drainage have the absolute right to organize drainage districts and give them shape and boundary lines as they choose.

"It is upon that theory that the case is before us for decision; defendant claiming the unlimited authority of the Drainage Board in forming districts, and the plaintiff denying that the authority is not extended as claimed by the defendant.

"Without an element of fraud alleged, the Court properly dismissed the suit.

"The Court in the case of *Bernard vs. Bayou Portage Drainage District*, 130 La. 637, among other reasons given for the decisions, said that as no fraud or wrong had been made to appear it would not interpose authority that would result in destroying a district.

"The situation is very similar in this case, except that it is a stronger case, in that fraud was alleged in the cited case.

"Here no fraud has been alleged nor its equivalent; besides, the question has been frequently decided that the Court would not interfere with the action of local authorities in establishing districts; unless it is made to appear that the case presented differs materially from those heretofore decided, the Court will have to adhere to its former ruling upon the subject.

"This, we take it, cannot be made to appear unless it is evident that fraud has been attempted or actually committed.

"Again, in the case of the *St. Mary Drainage District,* 131 La., fraud was charged. The local authorities were endeavoring to reclaim a small part of a district without regard to the reclamation in a very large remaining area.

"There was substantially discrimination.

"Here the issues do not present that question.

"Under well-established jurisprudence, there must be more than an ordinary error alleged.

"At this time in the history of the jurisprudence of this State it is of great importance not to set aside that which has received repeated approval. Hence the necessity of more than ordinary allegations. It is not a question of ordinary error.

"Without going further into the question presented in an exception, we will sustain the District Court's ruling."

II.

Let us look a moment at the cases cited as authority for the action of these courts on the issues in this case.

De Gravelle vs. Iberia & St. Mary Drainage District, 104 La. 703. There was no Federal question raised.

The Court found that

> **"the claim that plaintiff's particular property is not benefited *by the proposed drainage work* is not supported by the evidence, and therefore we need not discuss whether it would be specially exempted from taxation if it was in fact not benefited"** (p. 710).

It further held that the legislative discretion in defining the limits of a drainage district could not be attacked on the ground of error in judgment regarding the special benefits and defeated by satisfying the courts that no special or particular benefits are received, ***unless* under very exceptional conditions.** They cannot be attacked for impolicy or overthrown by showing that in particular instances they operate harshly or unjustly. Judicial judgment is not to be substituted lightly for legislative judgment. (See syllabus prepared by court.)

In *Burguieres vs. Sanders*, 111 La. 110, the complaint was, that the lands in question will derive no benefit from the proposed drainage, and that their inclusion in the drainage district, and the consequent imposition upon them of the drainage tax, amount to a taking of property without due process of law **in violation of the Fifth Amendment to the Constitution of the United States.**

The counsel for the plaintiff abandoned this claim.

In *Bernard vs. Bayou Portage Drainage District*, 130 La. 673, there was no Federal question propounded.

The Court held that

> "the matter of the creation and delimitation of drainage districts, within the parish, was entirely within the discretion of the Police Jury, and the declared

purpose of the ordinance enacted by it for the creation and delimitation of the district in question, having been the legitimate and lawful one of draining the lands in the district so created, and the Police Jury having acted within its powers, the Courts are without authority to impugn or inquire into its motive, *unless fraud or manifest invasion of private right were alleged and proved.*

* * * * * * * *

"There is no fraud alleged here, and no invasion of private right proved" (pp. 640-1).

In *Williams vs. Board of Commissioners,* 130 La. 969, there was no Federal question propounded.

The Court nevertheless annulled the proceedings of a drainage board and a tax levied by them on the ground that the whole tax to be raised in the whole district was to be expended exclusively in draining part of the district in which the plaintiff's lands were not situated, and in answer to the plea that plaintiff's right to complain was barred by prescription, the Court said:

> "Now, whether we consider the six months' prescription, or the two months' prescription, the plaintiff's right is not prescribed. *There would be no process of law in this case were we to hold otherwise. One person's property cannot be taken without consideration for the benefit of another. The property-tax payer cannot be compelled to pay taxes on his land in the interest of other land owners. The right to insist on some measure to a division of benefits is not subject to prescription"* (p. 974).

The opinion of the Supreme Court refers to a case in 131 La., which it styles the "St. Mary Drainage District." There is no such case in 131 La. at all.

III.

The proposition that a litigant in a State court cannot set up the Constitution of the United States as a shield to prevent an infringement of his constitutional rights, privileges and immunities from invasion by a State, or by one of its governmental subdivisions, or by one of its departments, unless he avers that the action complained of was fraudulent, is simply preposterous.

If the right, privilege or immunity is invaded, and nothing is demanded but a protection of the right from invasion, the good faith or bad faith of the invader is utterly immaterial. If by legislative action an *ex post facto* law, or a law impairing the obligation of a contract is adopted; or if any department of a State government deprives a person of life, liberty or property without due process of law, or denies him the equal protection of the law, the motive, *bona fides*, or *mala fides* of the act, does not make the act complained of either valid or invalid.

Any Court of a State that closes its doors to a litigant by declaring that an averment of fraud is necessary to permit the litigant to plead in his attack, or defense, his rights under the Constitution of the United States, is itself acting in flagrant violation of that Constitution, which imposes no such limitation, expressly or impliedly; and by that Constitution the Court is bound, "anything in the Constitution and laws of the State to the contrary notwithstanding."

IV.

The invasion of the plaintiff's property rights is set up in detail. The defendants demurred (excepted in the terminology of the Louisiana practice) generally and spe-

cially. Therefore, for the purposes of this hearing, every averment of fact in the petition, well pleaded, is assumed to be true.

The essential averments of fact are:

FIRST. That the plaintiff's property is situated on an island of unique formation, which rises up abruptly from the marshes along the Gulf of Mexico to a maximum elevation of 175 to 200 feet; that these marshes are subject to tidal overflow and separate this island from the main land; that the mainland is a populous district, consisting of low, flat lands, with a maximum elevation of about fifteen feet, the drainage of which all leads to these tidal overflow marshes; that this island does not need any drainage, but, on the contrary, is confronted with the problem of erosion.

SECOND. That the plaintiff's property is the most valuable and the highest assessed piece of property within the district.

THIRD. That this property never has received any benefit *directly or indirectly*, and never can or will receive in the future any benefit whatever from the drainage system, constructed and maintained in said drainage district.

FOURTH. That this drainage district was organized and delimited at the instigation of interested individuals for the purpose of draining certain lands lying between Bayou Teche and the tidal-overflow marshes surrounding Weeks Island, the said drainage to be conducted into the bayous and marshes surrounding that island.

FIFTH. That, in including Weeks Island in this drainage district, the Police Juries were not acting in the exercise of a *"sound and legal legislative discretion."*

SIXTH. That, in including Weeks Island in the drainage district, it was not intended, nor has it ever been intended, nor was it possible, nor is it possible to give any benefits of the drainage scheme inaugurated in the district to Weeks Island or the salt deposit thereon, directly or indirectly.

SEVENTH. That the sole object and purpose of including said island in the district was to raise revenue for drainage purposes on the most valuable and highest assessed piece of property in the district, for the sole benefit of other lands in the district, with the end of granting special benefit to the other lands, subject to improvement by drainage, without any benefit to the petitioner or to its property whatever.

EIGHTH. That the scheme of drainage was not based upon any theory that a general scheme of drainage would enure to the benefit of all the property therein even indirectly, but only upon the benefit to the territory lying between Weeks Island and Bayou Teche.

NINTH. That, in order to provide for this limited scheme of drainage, and for the taxing of petitioner's property for the sole benefit of the balance of the district, and without any benefits to itself, *directly* or *indirectly*, the Board of Commissioners of the District had called an election, and by virtue thereof, in pursuance of their plan, had levied a tax of 5 mills on the dollar for forty years to provide for a bond issue, the proceeds of which were to be used in inaugurating their said scheme of drainage in the district, notwithstanding the protest of the owners of Weeks Island.

The only averment of law in the petition is that this so-called tax for drainage purposes is not in its nature and essence a tax in the ordinary sense of that word, but is a forced local contribution, which can have no legal basis except upon the fact that the property upon which it is levied derives a benefit from the contribution or tax.

V.

If the averment of fraud were necessary to enable a litigant to plead the shield of the Constitution of the United States against an invasion of his property rights, in what manner could a legal fraud more effectually be pleaded as having been practiced in the delimitation of this drainage district than it is pleaded? It is an elementary rule of law that all the facts complained of must be set out in the petition, and that if these facts constitute a fraud, it is not necessary to aver expressly that the defendant was guilty of a fraud; nor does the use of denunciatory adjectives and the characterization as fraudulent of acts not fraudulent constitute a valid charge of fraud.

A breach of duty is a constructive fraud, and is sufficient to give a right to redress.

Baker vs. Humphrey, 101 U. S. 494, 502.

The Police Juries of Iberia and St. Mary committed a breach of duty, and hence a "constructive fraud," when they deliberately included this island in the drainage district, not for the purpose and with the intention of giving it some benefit from the general plan of drainage for the district, but solely for the purpose of deriving revenue from it as the most valuable and highest assessed property in the district, for the sole benefit of the other part of the district.

This conduct was not the exercise of a sound legislative discretion, but was oppressive and confiscatory, and fraudulent in every just sense of that word.

VI.

None of the statutes of Louisiana giving Police Juries power to delimit drainage districts make any provision for an inquiry into, a hearing on, or a determination of what property should be included in any particular district—*i. e.*, what property will be benefited by the plan of public drainage in that district. No such inquiry was made or hearing had in this district. Even the voters of the district had no say on the question of delimitation. They had no power except to vote or to refuse to vote the proposed tax. Corporations whose property was situated in any district, who could not vote, were therefore helpless. In case, therefore, of a taking of their property for the sole benefit of the balance of the property in any district and without any benefit to them whatever, they had no remedy except to challenge the action of the Police Jury in the courts. Such corporations must in the nature of things have a legal right to be heard to vindicate their violated property rights.

VII.

The special tax complained of in this case was a tax of 5 mills on the value of the property for forty years, to be expended in a public system of drainage in the district in which this property was included. Such a tax during its duration would take twenty per cent. of the value of the plaintiff's property, without a single dollar of benefit to it or to its property.

It was not a general tax for general purposes. It was a tax only in the broad sense of that term. It

was in the nature of a local assessment, based on some benefit to the property liable.

This proposition is settled in the jurisprudence of Louisiana.

Board of Levee Commissioners vs. Lorio Bros., 33 La. An. 276; *Henry Charnock vs. Fordoche & Grosse Tete Special Levee District*, 38 La. An. 323; *Williams vs. Board of Commissioners*, 130 La. 969.

VIII.

In *Norwood vs. Baker*, 172 U. S. 260, this Court laid down the general doctrine that local taxes for local public improvements had as their basis a benefit to the property taxed. It went further in that case and held that any burden in substantial excess of the benefit was to that excess a taking of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

There is nothing in the subsequent cases of *French vs. Barber Asphalt Paving Co.*, 181 U. S. 324; *Tonawanda vs. Lyon*, 181 U. S. 389; *Webster vs. Fargo*, 181 U. S. 394; *Cass Farm Co. vs. Detroit*, 181 U. S. 396; *Detroit Co. vs. Parker*, 181 U. S. 399; to detract from the force of this general doctrine as to the fundamental basis on which such local assessment is levied.

In *Cass Farm Co. vs. Detroit* (*supra*), and in *Detroit Co. vs. Parker, supra*, the majority of the Court (Justices Harlan, White and McKenna dissenting and adhering to the full doctrine of *Norwood vs. Baker*), explained the *Norwood case* by saying:

"We have recently held that it was not the intention of the Fourteenth Amendment to subvert the systems of the State pertaining to general and special taxation; that that amendment legitimately operates to extend to the citizens and residents of the States the same protection *against arbitrary State legislation* affecting life, liberty and property as it afforded by the Fifth Amendment against similar legislation by Congress, and that the Federal courts ought not to interfere when what is complained of is the enforcement of the settled laws of the State *applicable to all persons in like circumstances and conditions, **but only** when there is some abuse of law, amounting to confiscation of property or deprivation of personal rights as was instanced in the case of Norwood vs. Baker.*" (181 U. S., p. 398.)

The same language is used in *Detroit vs. Parker*, 181 U. S., at p. 401.

The main doctrine of *Norwood vs. Baker,—to wit*, that the power of taxation is exercised upon the assumption of an equivalent rendered in the protection of the property and person of the taxpayer, was again laid down in *Union Transit Co. vs. Kentucky*, 199 U. S. 194, where the Court annulled, as in contravention of the Fourteenth Amendment, taxes levied by the State of Kentucky on property not within its limits. The Court said that such taxation "partakes rather of the nature of extortion than of a tax" (p. 202). And again, the Court said (p. 204) "subject to these individual exceptions, the rule is that in classifying property for taxation some benefit to the property taxed is a controlling consideration and a plain abuse of this power will sometimes justify a judicial interference. (*Norwood*

vs. Baker, 172 U. S. 269.) It is often said protection and payment of taxes are correlative obligations."

The Supreme Court of Louisiana recognized the doctrine fully in the case of *Williams vs. Board of Commissioners*, 130 La. 969 (quoted from *supra*). In that case the whole of a general tax levied in the whole district under the same provisions of law as the general tax levied in this district, for the purpose of establishing a general system of drainage, was being expended for the sole benefit of two subdrainage districts out of nine.

In the present case the whole plan of drainage was originally organized so as to include the plaintiff's property within the limits of the district for the sole purpose of taxing it for the benefit of the other property in the district, and without the intention of ever giving it any benefit from the drainage system, which never did, would or could benefit the plaintiff directly or indirectly.

IX.

But it is claimed that the district in this case was delimited in the exercise of a legislative discretion by the police jury, granted to them for that purpose by the Legislature of the State, that by including Weeks Island in the limits of the district, without notice or hearing, the door was closed on the question as to whether that island receives benefits from the public drainage plan to be instituted.

If that is the law, then we have no case.

But we submit that this proposition of law was repudiated in *Norwood vs. Baker* (*supra*).

In that case this Court said (p. 278):

"And according to the weight of judicial authority, the Legislature has a large discretion in defining the territory to be deemed specially benefited by a public improvement, and which may be subjected to special assessments to meet the cost of improvement. In *Williams vs. Eggleston*, 170 U. S. 304,311, where the only question, as this Court stated, was as to the power of the Legislature to cast the burden of a public improvement upon certain towns, *which had been judicially determined to be towns benefited by such improvement, it was said*:

" 'Neither can it be doubted that if the State Constitution does not prohibit the Legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district, and what property shall be considered as benefited by a proposed improvement.'

"But the power of the Legislature in these matters is not unlimited. There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen's right of property. As already indicated, the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are improved is peculiarly benefited, and, therefore the owners do not in fact pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired if it were established as a rule of constitutional law, that the imposition by the Legislature upon particular private property, of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner of such improvement, could not be questioned by him in the courts of the country."

We submit that the doctrine contended for on the other side was again repudiated in *Union Transit Co. vs. Kentucky*, 199 U. S., p. 204.

X.

The taking of property without due process of law in the case at bar is as flagrant and as manifest as was done in the *Norwood case*. It was the arbitrary exercise of a power, to resist which the plaintiff had no remedy. It was given no hearing and no opportunity to defend. It was a fat, rich subject of taxation, whose money was wanted, and who was deliberately put into this drainage district for the purpose of taxing it for the sole benefit of the other property in the district, and of excluding it from any and all benefits from the taxes collected from it for forty years. Can a more manifest case of spoliation be presented to the Court? We submit not.

XI.

We therefore ask that the judgment of the Supreme Court of Louisiana be reversed and this cause be remanded to that Court, with instructions to reverse the judgment of the Nineteenth Judicial District Court and to remand the cause to that Court to be heard on the merits.

Respectfully submitted,

EDGAR H. FARRAR,
Counsel for Plaintiff in Error.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM 1915.

No. 141.

KILBS SALT COMPANY, LIMITED, PLAINTIFF IN ERROR

vs.

THE BOARD OF COMMISSIONERS OF THE IBERIA AND ST. MARY DRAINAGE DISTRICT AND GEORGE HENDERSON, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF IBERIA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF OF DEFENDANT IN ERROR.

L. P. DUBARY,

Counsel for Defendant in Error.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1915.

No. 141.

MILES SALT COMPANY, LIMITED, PLAINTIFF IN ERROR

Versus

THE BOARD OF COMMISSIONERS OF THE IBERIA AND AND ST. MARY DRAINAGE DISTRICT AND GEORGE HENDERSON, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF IBERIA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF OF DEFENDANT IN ERROR, ON MOTION TO DISMISS WRIT OF ERROR.

L. T. DULANY,
Counsel for Defendant in Error.

May It Please the Court:

The Board of Commissioners of the Iberia and St. Mary Drainage District, and George Henderson, Sheriff and Ex-Officio Tax Collctor Defendant in error, have moved to dismiss the writ of error herein on the ground that this Court is with-

out Jurisdiction to review the decision of the Supreme Court of the State of Louisiana, in this case, because the Supreme Court of the State of Louisiana did not decide, nor was it necessary to the disposition of the case that it should decide, nor was there any Federal question properly put at issue for decision.

Although Plaintiff has averred in his assignment of errors;

> "That the sole question in the case was a Federal questio, i. e. whether Plaintiff was deprived of his property without due process of law in contravention of the 14th Amendment of the Constitution of the United States,"

there is no Federal question properly presented, none was decided, nor was the decision of such a question necessary to the disposition of the case, wherein the sole issue was whether, or not, the petition presented a cause of action under the law and jurisprudence of the State of Louisiana.

Plaintiff in this petition avers that its property, upon which the five mill tax is sought to be imposed, was wrongfully included within the Drainage District to be taxed, because it derives no benefit, and the tax therefore is a taking of property without due process of law, in violation of the 14th Amendment of the Constitution of the United States.—**See p T-pp 1 to 4.**

This petition upon which a writ of prohibitory injunction issued was met by an exception of no cause of action.—**See T-pp 7 to 8.**

The exception was maintained and the suit dismissed, as set forth in the decree of the Supreme Court of the State of Louisiana, upon the grounds that the petition contained no allegation of fraud which under the law, and settled juris-

prudence of this State was necessary to set forth a cause of action.

The Judgment of the Supreme Court of the State rest entirely upon an independent question of pleadings under the laws of Louisiana, and decides no Federal question.

The Supreme Court of Louisiana in deciding the exception of no cause of action based its decision upon a long line of decisions cited in support of its Decree, and did not decide, and, it was not necessary to decide, any other question for the purpose of deciding this exception.

The Supreme Court of the State of Louisiana, did not decide whether or not, the enforcement of the five mill tax regardless of benefits derived amounted to taking property without due process of law, in contravention of the 14th Amendment of the Constitution of the United States.

> "A decision of a State Court, on an independent ground broad enough to sustain the judgment cannot be revised by the Supreme Court of the United States on the ground that a Federal question was involved." —160 U. S. 556.

The basis of Plaintiff's injunction is that the Police Jury illegally included its property within the Drainage District, that said property derives no benefits, that the said tax is a forced local contribution which can have no legal basis except upon the fact that the property levied upon derives a benefit, and that it was therefore a taking of propery without due process of law in violation of the 14th Amendment of the Constitution of the United States.

The question propounded is not Federal, but one to be determined by the laws of Louisiana. Under the law of Louisiana the action of the Legislative Body in the exercise of its

discretion as to what property shall be included in a Drainage District, will not be inquired into by the Court, except upon special averment, of fraud, which was not pleaded.

> "Degravel vs. Iberia and St. Mary Drainage District." —**104 La. 703.**
> Burguire vs. Sheriff.—**111 La. p 110.**"
> "Kelley vs. Chadwick."—**104 La. p 709.**
> "Berard vs. Bayou Portage D. D."—**130 La. p. 637.**

The averment that benefits derived to the property is the sole basis upon which the tax could be justified, and, therefore a taking of property without due process of the law, does not, in the absence of averments that the tax is being levied in contravention of the laws of the State of Louisiana, or that the laws of Louisiana are repugnant to the Constitution of the United States, bring a Federal question into the case for decision.

> "Appellate Jurisdiction by the United States Supreme Court will not be sustained where the decision of the State Court appealed from was made upon rule of general jurisprudence, or other grounds broad enough in themselves to sustain the judgment without considering a Federal question appearing in the case, but not **necessarily involved.**"—**New Orleans vs. Water Works Co., 142 U. S. 79.**

> "It is not enough, to give this Court jurisdiction over the judgment of a State Court, for the record to show that a Federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the case, and that it was actually decided, or that judgment could not be given without deciding it."—**Bowling vs. Lesner 91 U. S. 594. Brown vs. Atwell 92 U. S. 178. Church vs Kelsey 121 U. S. 282. California Powder Works Co. vs. Davis 151 U. S. 389.**"

To give this Court jurisdiction under United States Rev. Statutes No. 709, several things should be apparent from the record; the first is that there was a Federal question involved for determination; that a decision of the Federal question was necessary to the decision of the case, and was actually decided by the State Court. In support of the foregoing statement we quote **Cheateau vs. Gibson 111 U. S. 200.**

> "Where the judgment of the State Court might have been based either upon a State law repugnant to the Constitution of the United States, or upon some other independent ground, and it appears that the Court did base it upon other grounds, the Supreme Court of the United States will not take jurisdiction, even though it thinks the State Court decided erroneously."—**Dibble vs. Bellingham Bay Land Company, 163 U. S. 69. Meyer vs. Richmond, 172 U. S. 100.**

It does not seem to us that the question of benefits derived to the property as a basis of the tax sought to be levied, can by the mere allegation, that it is a taking of property without due process of law, in violation of the 14th Amendment of the Constitution of the United States, draw into question the Constitutionality of a tax levied unless there was also an attack made upon the Statute of the State as being repugnant to the Constitution and laws of the United States.

In the case of Powell vs. Brunswick County, 150 U. S., 14 Supreme Court Rep. 116, it was said,

> "If it appear from the record that a Federal question was directly involved so that a State Court could not have given Judgment without deciding it, that, would be sufficient, but resort cannot be had to the expedient of importing into the record the legislation of the State as judicially known to its Courts, and holding

> the validity of such legislation to have been drawn into question and decision necessarily rendered thereon in arriving at conclusions actually presented, and considered."

Plaintiff made no attack upon the law of Louisiana as being obnoxious to the United States Constitution.

The only issue raised by the pleadings, and passed upon by the State Court, is one to be determined under the laws of Louisiana, and the issue, and judgment is in no manner effected by the allegations that Plaintiff's property is being taken without due process of law in contravention of the Federal Constitution when the averments of the petition, are insufficient to maintain an attack upon the tax, which is not complained of as being in violation of the Constitution and laws of the State, and where no averment is made, that the Constitution and laws of Louisiana, are repugnant to, or in contravention of the protective provisions of the Federal Constitution.

In the case of Capital City Dairy Company vs. Ohio, 103 U. S. 238 and 248, Mr. Justice White delivering the opinion of the Court, said:

> "It is settled that this Court cannot consider an alleged Federal question when it appears that the Federal right thus relied upon had not been by adequate specification, called to the attention of a State Court, and had not by it been considered, not being necessarily involved in the determination of the cause."

Referring to the case of Chicago B. & Q. R. R. Co. vs. Chicago, 166 U. S. 226 as the only case relied upon by the Plaintiffs in error he said,

"In that case it was distinctly asserted in a motion for a new trial in the trial Court, that, the Statutes and ruling of the Court, and the verdict and judgment based thereon were contrary to the 14th Amendment, declaring that no State should deprive any person of life, liberty, or property without due process of law, nor deny any person within its limits, an equal protection of the law."

"In the assignment of errors in the Supreme Court of the State, it was distinctly reasserted that these Federal rights had been denied by the proceedings in the trial Court, and it was held in this Court that while the Supreme Court of Illinois did not, in its opinion, refer to the Constitutional rights asserted, the same were necessarily included in the judgment of the Court, and therefore the case was reviewable here."

After quoting the above mentioned case, Mr. Justice White proceeding to annalize the case under consideration, declared,

"It is clear from the opinion cited, that the State Court bases its decision on other than Federal grounds, and did not decide the Constitutional question sought to be made here."

"If the question was necessarily decided, notwithstanding the failure or refusal of the State Court to expressly in terms pass upon the matter, the case might be brought here. But in thise case the State Court expressly disclaimed decision of the Constitutional question, because it was not presented by proper proceedings."

Our view of this case is, that a decision of the State Court dismissing the suit on the exception of no cause of action, amounts to an expressed declaration by the Court that no

Federal question was properly presented by the pleadings for adjudication.

Respondent therefore prays that this motion to dismiss the writ of error be maintained, and that the rule ni si be recalled, and the order vacated.

And further pray, that plaintiff's demand be denied.

Respectfuly submitted,

L. T. DULANY,

Counsel for Defendant in Error.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM 1915. (No. 141.

MILES SALT COMPANY, LIMITED, PLAINTIFF IN ERROR

Versus

THE BOARD OF COMMISSIONERS OF THE IBERIA AND AND ST. MARY DRAINAGE DISTRICT AND GEORGE HENDERSON, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF THE PARISH OF IBERIA.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF OF DEFENDANT IN ERROR.

L. T. DULANY,
Counsel for Defendant in Error.

ON THE MERITS.

The defendant in eror, with much respect contends that, there is, no eerror in the judgment of the Supreme Court of Louisiana, maintaining the exception of no cause of action, and dismissing the suit upon the face of the pleadings.

Plaintiff enjoined the collection of the special five mill tax upon its property on allegations, which in substance are:

First, that the inclusion of its property within the Drainage District by the Police Juries of Iberia and St. Mary Parishes was illegal, and unwarranted.

> "That its said property did not receive any benefit from the tax so levied; that said so called tax is a forced contribution which can have no legal basis except upon the fact of benefits derived to the property and therefore is a taking of property without due process of the law, in violation of the Constitution of the United States."

The defendant moved to dissolve the injunction upon the face of the pleadings on the grounds which are set forth in its said exception of no cause of action as follows.—T. p 7.

Nineteenth Judicial District Court of State of Louisiana,
Parish of Iberia.

MILES SALT COMPANY

Versus

IBERIA AND ST. MARY DRAINAGE DISTRICT ET ALS.

Now into Your Honorable Court, through the Counsel comes defendant who appears herein only for the purpose of this motion, reserving all its rights to answer hereinafter in the event that this motion be not sustained, and moves Your Honorable Court to dissolve the injunction herein sued out upon the face of the papers for the following reasons to-wit:

FIRST

Because the petition upon which the said injunction issued set forth no legal cause of action; the demand being predicated solely upon the allegation that no benefit is, has been, or will be derived by said property; and which allegation does not propound a cause of action.

SECOND.

Because the complaint predicated as it is, upon the ground set forth in said petition, wherein no other complaint than that of no benefits is pleaded, is an admission that the tax is legal, and enforceable upon the property within the limits of said Drainage District.

THIRD.

Because the ground upon which the plaintiff predicates his injunction is one which has been judicially determined by the Supreme Court of this State as being a legitimate and lawful exercise of the discretionary powers of the Police Jury in the matter of the creation and delimitation of the Drainage District; the Courts being without power to inpugn or to inquire into its motives, where **no fraud is alleged.**

FOURTH.

Because the said petition contains no allegation of fraud and therefore sets forth no grounds upon which the Court can be permitted to inquire into or inpugn the action of the Police Jury, and hence no cause of action.

FIFTH.

Defendant shows that it is entitled to attorney's fees in such sum as may be shown by proof as adequate and reasonable for the dissolution of the injunction.

Wherefore, its prays that this motion be maintained, that the writ of injunction herein sued out be dissolved on the face of the papers, because the petition sets forth no legal ground or cause of action, and that the suit be dismissed; also as the injunction leaves no issue before the Court.

Defendant further prays that plaintiff in injunction be condemned to pay attorney's fees for the dissolution of this injunction in the sum of One Hundred Dollars; that service be duly made and plaintiff ruled to show cause why this injunction should not be dissolved.

And prays for all cost and general relief.

The decision of the Supreme Court of the State of Louis-

iana, affirming the decision of the trial Court, and maintaining the exception of no cause of action, is based entirely upon the settled jurisprudence of the State as announced by the Supreme Court in a number of cases, all consistent with the jurisprudence of the Supreme Court of the United States, as announced in **French vs. Barber Asphalt Co. 181 U. S. 324; Norwood Vs. Baker, 171 U. S. 269. See T. p. 17.**

Refering to the issue as formed by the pleadings. His Honor, Chief Justice Breaux, as the organ of the Court said,

"Here no fraud has been alleged nor its equivalent; besides, the question has frequeently been decided that the Court would not interfere with the action of local authorities in establishing districts, unless it is made to appear that the case presented differs materially from those heretofore decided, the Court will have to adhere to its former ruling upon the subject.

This, we take it, cannot be made to appear unless it is evident that fraud has been attempted or actually committed.

Again in the St. Mary Drainage District, 131 La. fraud was charged. The authorities were endeavoring to reclaim a small part of a District without regard to the reclamation in a very large remaining area.

There was substantially discrimination.

Here the issues do not present that question, under the well established rule, there must be more than ordinary error alleged.

At this time, in the history of the jurisprudence of this State, it is of great importance not to set aside that which has received repeated approval. Hence the necessity of more than ordinary allegations. It is not a question of ordinary error.

Without going further into the question presented in the exception, we will sustain the District Court's ruling.

For reasons stated, the judgment appealed from is affirmed."

The Courts have held that the benefits to be derived need not be direct or immediate; by which we understand, that an indirect benefit, such as might accrue to a special piece of property by reason of the general benefits derived by the surrounding territory, is, an all sufficient reason why all property within the limits should contribute its proportion to the cost, for the general good of the territory forming that district.

The fact that this particular piece of property may not be susceptible of drainage, by reason of its elevation above the surrounding territory of which it forms a part, should not exempt it from its proportion of the burden, any more than a certain tract of land bordering upon the Mississippi River, but not subject to overflow should be exempt on that account, from its proportion of the levee tax imposed for the general good of all.

In the case of George et als Vs. Sheriff et als, 45 A. 1232. the Supreme Court of Louisiana said: "On the theory that the drainage is for the sole purpose of benefiting the lands of the individual, it might be difficult to defend such legislation. But if stagnant water comes to threaten disease it may be a nuisance which under its police powers, the State would have authority to abate. These Acts creating drainage districts embrace entire areas; if exceptions are made it would probably defeat the purpose of adopting the law."

The action of the two Police Juries in locating this drainage district, and in the delimitation of the territory, so as to include the land of the plaintiff, certainly cannot be held unauthorized, because this special piece of property may not

be susceptible of drainage, nor because it may not receive, direct, or immediate benefits from the public works which benefit the entire district.

Under the doctrine laid down by the Supreme Court of Louisiana in the DeGravel case, it must be assumed that the Police Jury was aware of the topography of the territory; that in their opinion the benefits either directly, or indirectly would accrue to all property within the territory delimitated; and therefore the exercise of the legislative discretion vested in that body should be held justified, unless attacked upon the ground of fraud.

The removal of stagnant water from territory lying within menacing proximity to an inhabited section of country, is one of the ordinary problems which are presented to the Police Juries of the various parishes throughout the State; even when no other reason for drainage exists; or where the sanitary requirements combine with the agricultural interest, the benefits to be derived is a matter peculiarly within the knowledge, as well as the legislative discretion of that body. It may be that benefits of far greater value accrues to the plaintiff's land indirectly, and by reason of the improved condition of the surrounding territory, than are derived directly by the low lands through drainage.

HISTORICAL FACTS.

In the year 1898 the General Assembly of the State of Louisiana, under Act No. 48 of the Acts of that year, created a Drainage District known as "The Iberia and St. Mary Drainage District," hereinafter referred to as the "Drainage District," to be composed of certain lands lying in the Parishes of Iberia and St. Mary. Section 2 of said Act described the boundaries of said District and the lands to be drained as follows:

> "All the lands lying and being situated in the **First, Second and Seventh Wards west and north of Bayou Cypremont** in St. Mary Parish, west of Bayou Teche, and all of the lands in the First and Eigth Wards of the Parish of Iberia, and being that part of the Second Ward of the Parish of Iberia included within the lines commencing at a point on Bayou Teche at the upper limits of Olivier and Pharr Plantation, following the upper line of said plantation due west 80 arpents in depth, then following the line due south following the meanderings of Bayou Teche until it reaches the lines of the First Ward of Iberia Parish to a point 80 arpents in depth from said Bayou Teche, so as to include all lands lying between Bayou Teche and the said line 80 arpents west of it."

That said Act provided for the appointment of a Drainage Board, consisting of five Commissioners, to be appointed by the Governor, who were vested with authority to determine what lands should be drained and to drain such lands of said

Dsitrict, which lands would constitute such District and be taxed, Section 4 of said Act providing that they should

"cause a duplicate plan thereof to be made, accurately designing the lands to be drained and the names of their proprietors, such plan or plans to be deposited in the offices of the Clerks of the Court of the Parishes of Iberia and St. Mary, and notice shall be inserted in one newspaper published in said Parishes once each week during four weeks in succession, announcing that said Board of "Commissioners would proceed to drain said Drainage District, and said Board of Commissioners shall apply by petition to the District Courts in and for their Parishes of Iberia and St. Mary, which Courts upon due proof being made of the publication of said notice, shall decree that each portion of the property situated within their limits in said District of the property to be drained and all property to be benefitted by said Drainage, designated on the plan made by said Board of Commissioners, is subject to a first mortgage, lien and privilege in favor of said Board of Commissioners for such an amount as may be assessed for drainage of the said lands and interest therein at the rate of five per cent per annum from demand thereof. The decree of the District Court shall be recorded in the offices of the said Parishes and certified copies of the aforesaid plans of said lands shall be deposited in said offices, and whenever the Clerk of Court may be required to deliver a certified copy of mortgage on any real property embraced within the said plan as designated by said Board of Commissioners, each shall mention therein that said property is subject to a lien and first mortgage in favor of the Board of Commissioners of said Drainage District for such sums of money as may be assessed on such property for the drainage thereof; said lien and mortgage shall have precedence over all mortgages, liens

and privileges whatever, whether conventional, legal or judicial, and shall attach to said property until the amount assessed and the interest thereon shall have been paid in full after the proceedings above mentioned shall have been completed."

They were further authorized by Section 5 of said Act to issue and sell bonds in the amount of Thirty Thousand Dollars ($30,000.00), and after complying with the provisions of Section4 of said Act, were authorized to hold elections, and when authorizd to levy taxes on the lands in said District to be benefitted by the contemplated drainage, such authority being contained in Sections 7, 8, 9, 10, 11 and 12 of said Act No. 48 of 1898.

That the Governor, in accordance with the provisions of said Act, duly appointed five drainage commissioners, who proceeded to organize the Board of Commissioners for said Drainage District and to administer its affairs.

That on September 19th, 1899, the Board of Commissioners of the Drainage District met at its domicile in the City of Jeanerette and adopted a certain resolution calling an election to be held in said Drainage District on the 28th day of October, 1899, at which said election was to be submitted the question of levying a five mill tax upon the lands described on the maps and plans prepared by Bernhard and Kerrigan, that portion of the said resolution calling the said election and defining the proposition to be submitted, in so far as the five mill tax was concerned, being as follows:

"Now Therefore Be It Resolved by the Board of Commissioners, known as the Drainage Commissioners of the Iberia and St. Mary Drainage District, that a special election of the property taxpayers within the limits of the

said Drainage Distric and whose land, subject to such drainage, are situated therein, in the manner prescribed by the Constitution and laws of this State, on the 28th day of October, 1899, at voting places legally established, for the purpose of voting on the proposition to grant, to the said Board of Commissioners, known as the Drainege Commissioners of the Iberia and St. Mary Drainage District, the authority to levy and impose a special tax of not more than 5 mills on the dollar on all taxable property for not more than 30 years, situated in the said Drainage District and subject to taxation, and defined by the maps and plans as being affected. Said special tax being levied and collected for the sole and exclusive purpose of draining the lands situated within the said Drainage District, and to be collected in the same manner and at the same time as all other taxes due.

"Be It Further Resolved, That a special registration of the property taxpayers whose lands, or any portion thereof, are embraced within the prescribed limits of the said Drainage District, is hereby ordered to be held according to law before the 28th day of September, 1899."

The said election was duly held and a majority of electors, in number and amount, having voted in favor of the proposition, the Drainage Board accordingly levied, assessed and ordered collected, for a period of 30 years, a 5 mill tax upon the dollar per annum, upon the property described in said proposition as the property on which the taxes should be levied.

At the regular meeting of the Legislature of the State of Louisiana for the year 1900, there was adopted an Act, numbered 12, of the Acts of that year, approved June 27th, 1900, which authorized Police Juries of several Parishes of the State to divide their Parishes into Drainage Districts and appoint

Commissioners therefor. Section 14 of said Act provided that Drainage Districts organized under existing laws might avail themselves of the right to recognize under the provisions of Act No. 12 of 1900, the said Drainage District being required to assume all the contracts and obligations of the old District. Section 15 of said Act required that all Districts organized under the existing laws might avail themselves of the right to reorganize under Act No. 12 of 1900, and might sumbit a proposition to increase their indebtedness and to ratify old indebtedness evidenced by bonds; with reference to the levying of taxes, the said Act provided as follows:

> "And in voting at said election the said taxpayers shall vote to ratify the tax already voted when same has been voted to the constitutional limit, and when said tax does not reach the constitutional limit, the vote shall be had to ratify the tax already voted and vote to increase same to the constitutional limit if such is the proposition submitted. Said election when thus held when same results in the ratification of the bonds and taxes as described in this section shall be valid and binding as though the election was held for the first time to authorize the issuing of bonds to the amount therein voted. Said bonds shall be considered as one issue and the tax thus ratified and voted to be appropriated to the discharge of said bonds in principal and interest as provided by law."

That at the regular meeting of said Drainage Commission, held on July 27th, 1900, the said Drainage Commissioners of the Iberia and St. Mary Drainage District adopted a resolution, requesting the Police Juries of the Parishes of Iberia and St. Mary to reorganize the said Drainage District under the provisions of Act No. 12 of 1900; that the said Police

Jury of the two Parishes did proceed to reorganize said Drainage District under the provisions of Act No. 12 of 1900, vesting the said Drainage District as reorganized with the

> "Obligations granted and conferred upon said Drainage District created, organized or reorganized under the provisions of said Act."

The boundaries of said Drainage District as described in said ordinances reorganizing the said being described as follows:

> "All lands lying and being situated in the First, Second and Seventh Wards west and north of Bayou Cypremont in St. Mary Parish, west of Bayou Teche, and all lands in the First and Eighth Wards of the Parish of Iberia, and being that part of the Second Ward of the Parish of Iberia included within the lines commencing at a point on Bayou Teche at the upper limit of the Olivier and Pharr Plantation, following
> "the upper line of said plantation due west 80 arpents in depth, then following the meanderings of Bayou Teche until it reaches the line of the First Ward of Iberia Parish, at a point 80 arpents in depth from Bayou Teche so as to include all lands lying between Bayou Teche and said line of 80 arpents west of it."

That on August 10th, 1900, the new Board of Commissioners was organized, and on August 23d, a resolution was adopted by the Board of Commissioners, calling the election in said Drainage District for the 9th of October, 1900, submitting to said qualified electors three propositions, No. 3 being to ratify the tax already voted; said three propositions being as follows:

"1. To incur an indebtedness of One Hundred Thousand Dollars ($100,000.00) for the purpose of constructing a system of drainage for the Iberia and St. Mary Drainage District, which indebtedness is to consist of a ratification of the debt authorized by the voters on the 28th day of October, 1899, of Thirty Thousand Dollars ($30,000.00), and an additional indebtedness of Seventy Thousand Dollars ($70,000.00.)

"2. To authorize the Iberia and St. Mary Drainage District to issue One Hundred Thousand Dollars, ($100,000.00) of thirty-year five (5) per cent. interest bearing negotiable bonds of the face value of One Thosand Dollars ($1,000.00), and numbered from One to One Hundred respectively, to represent said indebtedness of One Hundred Thousand Dollars, which shall consist of a ratification of the authorization granted by the taxpayers of the Old District, on the 28th day of October, 1899, of Thirty Thousand Dollars ($30,000.00) of said bonds, which have never been issued, and the issuance of an additional Seventy Thousand Dollars ($70,000.00), to be one series, interest on the said bonds shall be paid annually. The Drainage District shall retire, after five years from the issuance, Four Thousand Dollars ($4,000.00) of the said bonds annually, to be selected by lot or chance. The Drainage District to have the option, after five years, or retiring a greater amount than Four Thousand Dollars ($4,000.00) of said bonds, but to be compelled to retire at least that amount.

"3. To authorize the Iberia and St. Mary Drainage District to levy a five (5) mill tax on all property subject to said taxation within the said Drainage District, said tax to run for a period of thirty (30) years. This is to be a ratification of the five mill tax voted hitherto in favor of the Old District on the 28th day of October, 1899, and an extension of the same for thirty years from date of this levying the first tax under this election, and this ex-

tension to affect all property subject to said taxation within the said Drainage District.

"Said tax shall be applied in the order following, viz: For the first five years:

"First, for the payment of interest on the bonds;

"Second, necessary amount of expenses, maintenance of system and improvements.

"Third, balance for sinking fund.

"After the first five years—

"First, for the payment of interest on the bnds;

"Second, Four Thousand Dollars ($4,000.00) per annum for a sinking fund to retire the bonds.

"The remainder of the funds realized by said Drainage Board shall be applied to necessary running expenses, maintenance and operation, for the reduction of the rate of taxation, or for the extension or betterment of said works, provided the expenditure for the running expenses, purchase, construction, maintenance, operation, extension or betterment of said works shall never exceed the amount of the fund on hand for such public works, nor reduce the said fund below a sum to meet the interest payment to become due in the year next succeeding such expenditures nor be paid out of the sinking fund required by this Act."

That said election resulted in favor of the proposition submitted and at a meeting held on the 17th day of October, 1900, the Drainage Commissioners adopted a resolution increasing the indebtedness issuing to the sum of $100,000.00 bonds on that amount and ratifying the 5 mill tax voted in said Drainage District in 1899, ordering same assessed and collected.

Finding that various tracts of land situated within the Drainage District had escaped the payment of this special drainage tax, the Board of Commissioners proceeded under authority of law, to cause the omitted property, including that

of Miles Salt Co. Ltd. to be carried upon the supplemental roll of assessment for a period of three years back and the current year as authorized by Section ( ) of Act ( )

The property being advertised for sale by the Tax Collector, this litigation ensued, and is embodied within the transcript of the record.

LOUISIANA DECISIONS.

Drainage Districts are established either by direct authority of the General Assembly, or by delegated authority to political bodies, or subdivisions of the State.

The body exercises this authority, determines over what territory the benefits are so far defused as to render it proper for lands to contribute to the cost of the drainage work. The subject for its determination is legislative in character. The legislative acts cannot be attacked on ground of error in judgment regarding the special benefits and defeated by satisfying the Court that not special or particular benefits are received unless in very exceptional conditions.

They cannot be attacked for impolicy, or overthrown by showing that in particular instances they operate harshly, or unjustly. Judicial judgment cannot be substituted lightly for Legislative judgment. The benefits contemplated need not be direct or immediate."—**DeGravel vs. Iberia and St. Mary Drainage District. 104 La. R. p 703.**

"The scheme of taxation for drainage purposes authorized by Art. 281 of the Constitution of 1898, Act No. 5 p. 7. (Extra Session) and Act 12 p. 12 of 1900, is not repugnant to the Fifth Amendment of the Constitution of the United States, and the pre-requisites of local assessments established by Act 48 p. 51 of 1898, have no place therein."—**Burguires et als vs. Sanders, Sheriff, 111 La. R. p. 110.**

"The matter of creation and delimitation of Drainage Districts is entirely within the descretion of the Police Jury of the Parish where such District may be created, and when

the Police Jury of a Parish adopts an ordinance, the declared purpose of which is to create and delimit a Drainage District within the Parish, it acts within its powers and the motive of such action will not be inquired into by the Courts, save upon allegations of fraud, or manifest invasion of private rights." **—Berard vs. Bayou Portage Drainage District, 130 La. R. p. 337.**

The complaint in this case presents the same issue (no benefits derived) as was presented in the case of Burguires vs. Sanders, 111 La. R. 110, wherein Mr. Justice Monroe as the organ of the Court said,

> "It will be observed that the first ground of complaint presents no other issue than that of the alleged repugnancy to the Constitution of the United States of the law under which the Defendants are proceeding and concerning that issue the learned Counsel for Plaintiff now says that in view of the decision of the Supreme Court of the United States in French vs. Baker, 171 U. S. 269, they have not the courage to make the argument which their petition propounds and they leave the matter to the Court."

As thus presented the question might be disposed of by the statement that this Court feels no more at liberty than do the learned Counsel to disregard an interpretation placed by the Supreme Court of the United States upon the Federal Constitution. The fact however is that the doctrine of the case of French vs. Barber Asphalt Co., is substantially the same as has been announced by this Court, and affirmed in Kelley vs. Chadwick, 104 La. 179, Woodby vs. Chadwick, 108 La. 66. In suming up the case, Mr. Justice Monroe went on to say,

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"Assuming the doctrine to have been correctly applied by the Supreme Court of the United States, and by this Court, in cases in which proceeding upon the theory that they derive greater benefit therefrom, particular parcels of land in the same taxing district are made to bear in proportion to frontage, but without regard to assessed valuation, or to particular benefits derived to each parcel the whole cost of certain local improvements **afaciori** should it be applied in the present case, in which proceeding upon the theory of benefits to the whole District and under the authority of the law, constitutional and statutory, there has been levied a tax as contra-distinguished from a local assessment upon all the property of the District, on the basis of its assessed valuation and without regard to the special benefits to be derived by any particular property. For while there is appreciable force in the argument that if a number of parcels of land are made to bear the burden of an assessment for local improvements, because of special benefits to be derived therefrom, such burden should be distributed in equal proportion to the benefits, the proposition cannot be entertained that the taxing power proper is to be regulated upon the basis of the benefits to be derived in particular cases by particular individuals or particular property."

The opinion of Mr. Justice Monroe cited herein, very clearly emphasizes the fact that the Supreme Court of Louisiana has not announced the doctrine held by it in this, and the numerous other cases involving the theory of the law under which an advalorum tax is imposed without due regard to the jurisprudence of Your Honorable Court.

Citing Kelley vs. Pittsburg, 104, U. S. 78, Your Honorable Court said,

"The only point involved or adjudicated was that the 14th Amendment of the United States Constitution did not stand in the way of the legislation of the State extending the limits of the City, or Township so as to include lands fit for agricultural use only, and subject them to taxation for the local purposes of the extended City or Town, although the owners did not enjoy the advantages of the municipal government to the same extent as those who resided in the thickly settled parts of the City, or Township."

The tax was maintained.

Under the jurisprudence of this State, consistant, and in accord with the jurisprudence of Your Honorable Court, the tax complained of is not a forced contribution based upon special benefits to be derived, but it is an advalorum tax upon all the property within the whole district, levied by authority of the Constitution and Statutory Laws of the State.—**Con. Art. 281, Act 48 of 1898, Act 129 of 1900.**

Plaintiff's petition declares that the tax imposed in this case is a general advalorum tax, imposed by authority of the Constitution and Statutory laws of the State, but it makes no attack upon either State Constitution nor Statute being repugnant to the Constitution of the United States.

It alleges that said tax is a taking of property without due process of the law in contravention of the 14th Amendment of the United States Constitution solely upon the theory that the property derives no direct benefits coupled with the averments that this is a forced contribution which can be tolerated only upon the fact of benefits derived, thus losing sight of the distinction made by the Louisiana Court and the Supreme Court of the United States between the general advalorum tax imposed regardless of special benefits and the local assess-

ments, which is based upon special benefits directly derived by the property burdened.

In Kertland vs. Hotchkis, 100 U. S. 491, 498, 499. Mr. Justice Harland said,

> "It may be regarded as the established doctrine of this Court, that so long as the State by its laws prescribing the mode of taxation does not intrench upon the legitimate authority of the union or violate any right recognized or secured by the Constitution of the United States. this Court as between the State and its citizens, can afford him no relief against the State taxation, however injust, oppressive or onerous." (p. 499.)
> "It is for the State to determine consistant with its own fundamental laws whether such property owned by one of its citizens shall contribute by way of taxation to maintain its government. Its discretion in that regard cannot be suppressed or controlled by any department of the Federal Government for reasons to obvious to require argument in its support such taxation violates no provision of the Federal Constitution."

It is quite apparent that the theory upon which the plaintiff in this case had made its complaint alleging a violation of the 14th Amendment of the United States Constitution rest entirely upon the assumption that the tax imposed is a special assessment or forced contribution (as contra-distinguished from a tax) authorized upon the basis of a special benefits to be derived thus completely ignoring the fact that the tax imposed is an advalorum tax and not a force contribution. (Constitution Art. 232 and 281) not based upon the theory of direct benefits.

Under the authority of Art. 281 of the Constitution of 1898, the General Assembly of the State of Louisiana, enacted

Act 148 of 1898, creating and delimitating the St. Mary Drainage District which was reorganized under Act No. 12 of 1900 and in all respects conforming to the requirements of the Constitution and Statutory laws of the State and submitted the proposition of the tax to the property owners. Bonds which were secured as to their payment by special five mill tax voted by the taxpayers were issued and sold.

The Plaintiff now seeks to avoid the payment of the tax upon its property by the plea of no benefits derived. But the attack upon the action of the Police Jury of the two Parishes in the delimitation of the District is made without the necessary allegations to set forth a cause of action.

The Supreme Court of this State held in this case as it held in a number of cases, that the delimitation of a Drainage District is a matter entirely within the discretion of the legislative body which is presumed to posses a peculiar knowledge of the territory delimitated, and that its action will not be inquired into, or set aside upon the allegation that the property receives no benefits, **unless fraud is alleged and proved.** Plaintiff made no such allegation.

There being no allegation of fraud as a basis of the attack upon the action of the Police Jury including plaintiff's land in the Drainage District and benefits derived not being a necessary basis to warrant the advalorum tax, as as has often been held by the Supreme Court of Louisiana and also by the Supreme Court of the United States, the petition set forth no cause of action.

This is the settled jurisprudence of this State and we invoke the doctrine laid down by Your Honorable Court, in holding that a decision of a State Court based upon the laws of practice and pleading, which obtain in that jurisdiction is not obnoxious to any provision of the Federal Constitution.

If Plaintiff cannot (and we are confident that such is the case) stand upon the law which it invokes, it can find no relief by an appeal to equity because of its failure to take such timely and proper action as was open to it under the laws of the State, in order to avoid the inclusion of its lands within the Drainage District.

In the case of Fallbroke Irrigating District vs. Bradley, 164 U. S. wherein the validity of the irrigation act was involved, the objection to the Act was that it permitted the whole cost to be levied by the Board of Directors of the District upon all the real estate of the District according to value, without reference to the degree of benefits conferred. Mr. Justice Peckham said,

> "Assuming for the purpose of this objection that the owners of the land had by the permission of this Act, and before the lands were finally included in the District an opportunity to be heard before a proper tribunal upon the question of benefits, we are of the opinion that the decision of such a tribunal in the absence of actual fraud and bad faith, would be as far as this Court is concerned be conclusive upon the question."

The opportunity to be heard by the land owner under the laws of Louisiana before his land was finally included in the Drainage District, was within the power of the Plaintiff who could have had resort to the Court of the State upon proper proceedings and allegations of fraud and bad faith. No such timely action was taken and in this tardy attempt no fraud is pleaded.

In French vs. Barber Asphalt Co., Mr. Justice Shiras, referring to the case of Spermen vs. Merchant, 125 U. S. 145,

wherein the Court of Appeals of the State of New York upheld the validity of an assessment of lands to cover the expenses of local improvements, quoting the opinion handed down in that case, said,

> "The definition of legislative power therein given was approved; and then embodies the following extract from the approved opinion."

"In the absence of any more specific constitutional restrictions than the general prohibition against taking property without due process of law, the legislature of the State having the power to fix the sum necessary to be levied for the expense of the public improvements and to order it to be assessed either like other taxes upon the property generally or only upon lands benefitted by the improvements, it is authorized to determine both the amounts of the whole tax and the class of land which will receive the benefits and should therefore bear the burden, although it may if it saw fit, commit the ascertainment of etiher or both of these facts to the judgment of a commssion."

> "When the determination of what lands are to be benefitted, is entrusted to a commission, the owners may be entitled to notice and hearing on the question whether the lands are benefitted and how much.
>
> "But the Legislature has the power to determine by Statute imposing the tax, that land which might be benefitted and if it does so, its determination is conclusive upon the owners."

Under the laws of Louisiana that determination of the State Legislature or the Police Jury as to what lands shall be included within a Drainage District and subjected to the special advalorum tax, is conclusive, admitting of no interference by the Court, unless attacked upon allegations of fraud.

The Plaintiff in error, basis his complaint solely upon the ground of no benefits received and though admitting the tax to be an advalorum tax, characterizes it as a local assessment and forced contribution which rest entirely upon special benefits.

But the tax is, as we understand, one which rests on the authority of the Constitution and laws of the State. (See Constitution 1898, Art. 181, Act 12 of 1900) an advalorum tax resting entirely upon the basis of general benefits derived to the District, without regard to direct benefits to any particular portion of the District.

The distinction between these cases wherein a forced contribution are held to be justified solely upon the ground of benefits derived to the property, and those cases wherein the tax (advalorum) is imposed upon the whole property of the District without reference to direct benefits, has been very clearly defined by the Supreme Court of this State and by Your Honorable Court in the case of **French vs. Barber Asphalt Company, 181 U. S. p**

Notwithstanding the jurisprudence plaintiff in error, relying entirely upon the allegation, no benefits derived and in disregard of the distinction made by Your Honorable Court as to the basis of the tax under these two distinct theories of the law, and without any attack upon the State Statute, or alleged repugnancy of he State law to the Federal Constitution, but solely upon the general allegation that,

"It is a taking of property without due process of the law in violation of the Constitution of the United States, now invokes the supervisory power of Your Honorable Court."

Under the law of Louisiana, Sec. 56 of Act 170 of 1898, in all injunction proceedings wherein the Tax Collector is sought to be restrained from the collection of the tax, the Attorney-at-Law representing the Tax Collector in the suit, is, if successful in the enforcement of the tax entitled to a compensation of ten per cent. upon the amount of the tax and penalties so collected, and this compensation shall be paid by the party cast.

Attorney fees were claimed and allowed by the State Court, but not in the Statutory amount, and we are uncertain as to what extent Your Honorable Court would be disposed to amend the judgment of the State Court in this respect, but we call attention to the matter of compensation provided by the cited Statute, coupled with the obvious fact that the services of the Attorney representing the Tax Collector have been rendered very much more arduous by the plaintiff's action in taking this case up to Your Honorable Court on the writ of error.

Wherefore this respondent prays that the writ herein taken be recalled, that the judgment of the State Court be amended so as to allow the Attorney for Defendant ten per cent. Attorney's fees upon the total tax and penalties to be collected under this decree and as amended that the judgment of the State Court be affirmed.

And this respondent prays for all cost, and for all equitable and general relief.

Respectfully submitted,

L. T. DULANY,
of Counsel.